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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELECTRONICALLY

FILED

*Superior Court of California,
County of San Francisco*

03/15/2021

Clerk of the Court

BY: RONNIE OTERO

Deputy Clerk

CGC-21-590398

ISABELLA SAVINI MERANTE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

AMERICAN INSTITUTE FOR
FOREIGN STUDY, INC, a Connecticut
Company,

Defendant.

CASE NO.:

(UNLIMITED CIVIL CASE)

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

DEMAND FOR JURY TRIAL

1 Plaintiff Isabella Merante complains against American Institute for Foreign Study, Inc.
2 d/b/a Au Pair in America (“Au Pair in America” or “Defendant”) as follows:

3 **INTRODUCTION**

4 1. Plaintiff Isabella Merante brings this action under the California Labor Code
5 Private Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”). Through this action,
6 Plaintiff Merante seeks to recover civil penalties on behalf of herself and other current and
7 former au pairs for Defendant’s violations of Cal. Labor Code §§ 201, 203-204, 221, 224, 226,
8 226.7, 510, 1174, 1194, 1194.2, 1194.5, the Industrial Welfare Commission Minimum Wage
9 Order, and Industrial Welfare Commission Wage Order 15.

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

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

26 4. Plaintiff challenges Defendant’s pay practices and seeks civil penalties for
27 Defendant’s violations of the California Labor Code, Minimum Wage Order and the Industrial
28 Welfare Commission Wage Order.

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1 including the right terminate or reassign them.

2 12. Plaintiff signed an Au Pair in America Terms and Conditions agreement, which is
3 attached hereto as Exhibit A. That agreement provides Defendant “may refuse to accept [the]
4 application, or may reject/withdraw an application, at any stage with or without reason” and that
5 Defendant will train Plaintiff to work as an au pair through its Orientation. (Ex. A, pp. 1-2.)

6 13. The agreement further provides that once in the United States the au pairs must
7 “maintain at least monthly contact with [her] Community Counsellor” and that “should a
8 problem arise with [her] Host Family...Au Pair in America may be able to re-match her.” (Ex.
9 A, p. 2.)

10 14. Defendant also controls the scope of the au pairs’ responsibilities and working
11 conditions through detailed “Host Family Guidelines,” attached hereto as Exhibit B.

12 15. The Guidelines details Defendant’s extensive role in the hiring and training
13 process. including meeting with the au pairs for in-person interviews to determine if it will
14 accept the au pair into the program. Defendant also controls how au pairs interact with potential
15 host families, requiring them to set up an account and message families through that account.
16 Defendant requires au pairs “keep [the] au pair services team updated” throughout the matching
17 process, and requires the host family confirm the match with Defendant. (Ex. B, p. 13.)

18 16. Defendant extensively trains au pairs, requiring the au pair “attend an orientation
19 program” that has a “two-fold purpose,” including providing “information of a basis level
20 regarding rules and regulations” and “cross-cultural issues, child development, child care safety
21 and emergency procedures, program guidelines and host family expectations.” (Ex. B, p. 8.)

22 17. The Guidelines further demonstrate the high level of supervision Defendant
23 exercises over Plaintiff and other au pairs. Defendant maintains contact with au pairs through its
24 Community Counselors who are “expected to help the au pair acclimate to the community and
25 monitor the activities of the exchange relationship to ensure they are in keeping with the intent of
26 the cultural exchange child care program established by Au Pair in America.” (Ex. B, p. 17.) It
27 requires host families and au pairs initially meet with the Community Counsel to “discuss how
28 things are going so far and address any questions or concerns” and to review the au pair’s

1 “schedule of duties and responsibilities.” (Ex. B, p. 17.) It further requires the host family and au
2 pair make “ongoing contact” with the Counselor and requires the host family “inform the
3 Community Counsel if leaving the au pair and children in the home with another responsible
4 adult.” (Ex. B, p. 17.)

5 18. Defendant also determines whether an au pair’s employment will be terminated or
6 continue. Defendant reserves the right to terminate au pairs from the program, and is involved in
7 setting the standards for requesting a rematch. (Ex. B, pp. 23, 31.) Defendant forbids families
8 from terminating the au pair immediately, instead requiring the host family continue “hosting
9 [the] au pair for a period of up to two weeks” before a rematch. (Ex. B, p. 23.) Further, through
10 its Program Support and Policies Defendant reserves the right to terminate the host families’
11 access to au pairs for violations such as not paying or reducing the au pairs minimum weekly
12 stipend or not allowing or reducing the au pair’s free time. (Ex. C, p. 1.)

13 19. The handbook further provides detailed instructions as to au pair’s
14 responsibilities, including, among other things, “feeding, bathing and dressing your child,
15 planning your child’s daily activities and playing with your child, supervising and babysitting
16 and transporting your child to school, the local pool or park.” (Ex. B, p. 3.) Defendant further
17 dictates the tasks an au pair should not perform, including “[h]ousework or chores such as
18 vacuuming, mopping, dusting, pet care and total responsibility for cleaning your house is not part
19 of your au pair’s responsibilities.” (Ex B, p. 3.)

20 20. Defendant sets tiered pay based on the au pair’s level of childcare experience.
21 Defendant instructs host families to pay regular au pairs a minimum weekly “stipend” of \$195.75
22 and sets the pay at a minimum of \$250.00 for au pairs participating in their “Au Pair
23 Extraordinaire” program. (Ex. C, p. 3.) The stipend does not include any payment for overtime.
24 On top of this systemic illegal underpayment, Defendant (1) fails to provide meal periods after
25 five hours of work; (2) takes deductions or minimum wage credits— including for meals and
26 housing—that are contrary to California law; (3) fails to keep records of time worked, breaks
27 taken, or meal and housing credits taken against minimum wage as required by California law;
28 (4) fails to compensate au pairs at all for training time; and (5) fails to provide wage statements

1 with required information about pay, deductions, and withholding.

2 21. Ms. Merante was one of Defendant's au pairs in California, where she has worked
3 since May 2019. For approximately the first year, from May 2019 to June 2020, Plaintiff
4 Merante worked in San Francisco, California and received a weekly stipend of \$200.00 per
5 week. She would receive \$15.00 additional for each hour she worked over 45. When she began
6 with a new family in Tiburon, California she received \$250.00 per week with no additional
7 payments. She regularly works in the home for 10 hours in a day, and regularly works between
8 42-50 hours per week. She sometimes works over 10 hours in a day, and would sometimes work
9 up to or over 55 hours. She regularly works more than 6 hours continuously without being fully
10 relieved of duty for a meal period. Ms. Merante's agreement with Defendant provides that she
11 may work up to 10 hours per day, and up to 45 hours per week. It does not provide for payment
12 of overtime.

13 22. Ms. Merante and other au pairs did not enter into any agreement to credit meals or
14 lodging against Defendant's minimum wage obligations, as required by Wage Order No. 15. As
15 such, the weekly stipend fell far below the minimum wage for the hours Ms. Merante worked.
16 To the extent Defendant seeks credit for the value of any room or board without Ms. Merante's
17 agreement such credit would be an unlawful repayment of wages to the employer and/or an
18 unlawful deduction from wages.

19 23. Although Ms. Merante and other au pairs were sometimes able to eat a meal while
20 they were working, they remained on duty during those meals. Accordingly, Ms. Merante and
21 other au pairs often worked work periods of five or more hours without being relieved from duty
22 for a meal period.

23 24. Upon information and belief, Defendant did not maintain any records of hours
24 worked, breaks taken, or the value of room and board provided for Ms. Merante and other au
25 pairs. Defendant did not provide Ms. Merante and other au pairs with any wage statements
26 whatsoever, much less a wage statement itemizing wages earned, hours worked, rates of pay, the
27 name and address of the employer, deductions taken, net wages earned, the inclusive dates of the
28 period, or the name of the employee.

1 25. Accordingly, Ms. Merante and other au pairs suffered from the systematic
2 violations described above. Defendant's pay practices violate numerous provisions of Wage
3 Order 15, the Minimum Wage Order and the Labor Code. Defendant has:

- 4 1) Failed to pay minimum wage.
- 5 2) Failed to pay overtime pay.
- 6 3) Failed to provide meal periods.
- 7 4) Failed to timely pay all wages owed.
- 8 5) Made illegal deductions from wages, or took illegal credits against minimum
9 wage, including for housing and meals.
- 10 6) Failed to maintain records showing hours worked, breaks taken, and value of
11 room and board provided.
- 12 7) Failed to provide lawful wage statements.

13 26. Plaintiff alleges that these violations are ongoing and continuing and that they
14 affected and continue to affect current and former au pairs who work or have worked for
15 Defendant in California.

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

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

23 28. Plaintiff, as an aggrieved au pair/employee, brings this claim under California
24 Labor Code §§ 2698–2699 in a representative capacity on behalf of current and former au pair
25 of Defendant subjected to the unlawful wage and hour practices alleged herein.

26 29. The California Labor Code Private Attorneys General Act of 2004 ("PAGA"),
27 California Labor Code § 2698 et seq., grants California employees the right to bring a civil
28 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

1 achievement of maximum compliance with state labor laws by empowering aggrieved
2 employees to act as private attorneys general in order to recover civil penalties for Labor Code
3 violations that would otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal.
4 4th 969, 980.

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

12 **Failure to Pay Minimum Wages**

13 31. The IWC Wage Orders, California Labor Code §§ 1194 and 11974, and the San
14 Francisco Minimum Wage Ordinance require employers to pay employees at least minimum
15 wage for all hours worked.

16 32. IWC Wage Order No. 15, § 4(A) provides that “Every employer shall pay to each
17 employee wages not less than the following: (1) Any employer who employs 26 or more
18 employees shall pay to each employee wages not less than the following: (a) Ten dollars and
19 fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2017; (b) Eleven dollars
20 (\$11.00) per hour for all hours worked, effective January 1, 2018; (c) Twelve dollars (\$12.00)
21 per hour for all hours worked, effective January 1, 2019; and Thirteen dollars (\$13.00) per hour
22 for all hours worked, effective January 1, 2020.

23 33. The San Francisco Minimum Wage Ordinance, San Francisco Administrative
24 Code, Chapter 12R.4, provides in relevant part that “(a) Employers shall pay Employees no less
25 than the Minimum Wage for each hour worked within the geographic boundaries of the City. (1)
26 Except as provided in subsection 12R.4(b), the Minimum Wage paid to Employees shall be as
27 follows: (A) Beginning on May 1, 2015, the Minimum Wage shall be an hourly rate of \$12.25.
28 (B) Beginning on July 1, 2016, the Minimum Wage shall be an hourly rate of \$13.00. (C)

Beginning on July 1, 2017, the Minimum Wage shall be an hourly rate of \$14.00. (D) Beginning on July 1, 2018, the Minimum Wage shall be an hourly rate of \$15.00. (E) Beginning on July 1, 2019, and each year thereafter, the Minimum Wage shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as determined by the Controller.” The San Francisco Minimum Wage beginning on July 1, 2019 was \$15.59.

34. 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.

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

36. Under California Labor Code § 1197.1, Plaintiff 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

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

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

6 39. By the course and conduct set forth above, Defendants violated Cal. Labor Code
7 §§ 510, 1194, and 1454 by failing to pay overtime pay to Plaintiffs and other au pairs when they
8 worked in excess of 9 hours in a day or 45 hours in a week.

9 40. With respect to violations of Labor Code §§ 510, 1194, and 1454, Labor Code
10 §558 imposes a penalty of \$50 for each aggrieved employee per pay period for the initial
11 violation, and \$100 for each aggrieved employee per pay period for each subsequent violation.
12 Plaintiffs hereby seek recover of these penalties.

13 41. Labor Code § 2699(a) provides that, “[n]otwithstanding any other provision of
14 law, any provision of this code that provides for a civil penalty to be assessed and collected by
15 the Labor and Workforce Development Agency or any of its departments, divisions,
16 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
17 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
18 herself and other current or former employees pursuant to the procedures specified in Section
19 2699.3.”

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

22 **Timely Pay Violations**

23 43. Labor Code § 204(a) provides as follows: “All wages, other than those mentioned
24 in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
25 payable twice during each calendar month, on days designated in advance by the employer as the
26 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
27 month shall be paid for between the 16th and the 26th day of the month during which the labor
28 was performed, and labor performed between the 16th and the last day, inclusive, of any calendar

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

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

12 45. Labor Code § 210(a) provides: "In addition to, and entirely independent and apart
13 from, any other penalty provided in this article, every person who fails to pay the wages of each
14 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
15 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars
16 (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or
17 intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
18 percent of the amount unlawfully withheld. (b) The penalty shall either be recovered by the
19 employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil
20 penalty through the issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
21 contesting, and enforcing judgments for citations issued by the Labor Commissioner under this
22 section shall be the same as those set forth in subdivisions (b) through (k), inclusive, of Section
23 1197.1.

24 46. Labor Code § 2699(f) provides: For all provisions of this code except those for
25 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
26 these provisions, as follows: (1) If, at the time of the alleged violation, the person does not
27 employ one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the
28 time of the alleged violation, the person employs one or more employees, the civil penalty is one

1 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
2 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
3 violation.

4 47. The weekly stipend Plaintiff and other au pairs received failed to compensate
5 them at least the minimum wage for all hours worked. Accordingly, Defendant failed to timely
6 pay Plaintiff and other aggrieved employees their wages due within the intervals required by
7 Labor Code Section 204.

8 48. Under California Labor Code §§ 210 and 2699, Plaintiff seeks to recover a civil
9 penalty of one hundred dollars (\$100) for Plaintiff and each underpaid employee for the initial
10 violation, and two hundred dollars (\$200) for Plaintiff and each underpaid employee for each
11 subsequent violation, for every pay period in which late payment occurred.

12 **Unlawful Deductions and Credits**

13 49. Labor Code § 221 makes it unlawful for an employer to collect or receive from an
14 employee any part of wages paid to the employee.

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

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

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

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

24 54. Labor Code § 225.5 provides that, "In addition to, and entirely independent and
25 apart from, any other penalty provided in this article, every person who unlawfully withholds
26 wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a
27 civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure
28 to pay each employee. (b) For each subsequent violation, or any willful or intentional violation,

1 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
2 unlawfully withheld. The penalty shall be recovered by the Labor Commissioner as part of a
3 hearing held to recover unpaid wages and penalties or in an independent civil action. The action
4 shall be brought in the name of the people of the State of California and the Labor Commissioner
5 and attorneys thereof may proceed and act for and on behalf of the people in bringing the action.
6 Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor
7 and Workforce Development Agency dedicated to educating employers about state labor laws,
8 and the remainder shall be paid into the State Treasury to the credit of the General Fund.”

9 55. Similarly, Labor Code § 2699(f)(2) provides for a civil penalty of one hundred
10 dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial violation
11 of Labor Code §§ 221 and 224.

12 56. Accordingly, Plaintiff seeks to recover civil penalties as set forth above for
13 Defendant’s violations of Labor Code §§ 221 and 224.

14 **Failure to Provide Meal Breaks**

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

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

23 59. Defendant failed to provide Plaintiff and other au pairs with bona fide meal
24 breaks when they were completely relieved from duty, because Plaintiff and other au pairs
25 remained responsible for the care of the children while they ate their meals.

26 60. By failing to provide Plaintiff and other au pairs with these meal periods,
27 Defendant violated California Labor Code §§ 512 and 226.7.

28 61. Under California Labor Code §2699(f)(2), Plaintiff seeks to recover a civil

1 penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period
2 for the initial violation of Labor Code §§ 226.7 and 512 for failing to provide meal periods, and
3 two hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each
4 subsequent violation of Labor Code §§ 226.7 and 512 for failing to provide meal periods.

5 **Wage Statement Violations**

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

10 63. Defendant failed to comply with the Labor Code by knowingly and intentionally
11 failing to provide Plaintiff and aggrieved employees with accurate written statements showing
12 their actual and total hours worked.

13 64. Under California Labor Code § 226.3 which provides for civil penalties for
14 violations of California Labor Code § 226(a), Plaintiff seeks a civil penalty of two hundred fifty
15 dollars (\$250) for Plaintiff and each aggrieved employee per violation for the initial violation,
16 and one thousand dollars (\$1,000) for Plaintiff and each aggrieved employee per violation for
17 each subsequent violation of Labor Code § 226(a) for failure to provide timely, accurate,
18 itemized wage statements.

19 **Recordkeeping Violations**

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

24 66. Labor Code § 1174.5 provides that “Any person employing labor who willfully
25 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
26 complete records required by subdivision (d) of Section 1174, or to allow any member of the
27 commission or employees of the division to inspect records pursuant to subdivision (b) of
28 Section 1174 , shall be subject to a civil penalty of five hundred dollars (\$500).

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

Attorneys' Fees

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

Exhaustion

69. On January 8, 2021, pursuant to California Labor Code § 2699.3, Plaintiff sent notice by certified mail to the Labor and Workforce Development Agency (LWDA) and Defendant of the specific provisions of the Labor Code that have been violated, including the facts and theories to support the violations. The LWDA received this notice on the same day, January 8, 2021. *See* Letter from Nichols Kaster, LLP to the LWDA and Defendant attached hereto as Exhibit D. The sixty-five-day time limit for the agency to respond has expired, such that Plaintiff has exhausted her administrative remedies.

PRAYER FOR RELIEF

Based on the above allegations, Plaintiff respectfully requests entry of judgment on behalf of herself and other current and former employees against Defendant, as follows:

1. For civil penalties under Labor Code § 2699 in an amount according to proof;
2. For prejudgment interest and post-judgment interest as allowed by law;
3. For attorneys' fees and costs, as authorized under Labor Code § 2699(g)(1);
4. For such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demands a trial by jury.

1
2 Dated: March 15, 2021

RUKIN HYLAND & RIGGIN LLP

3
4 By: /s/ Matthew C. Helland

5 Matthew C. Helland

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