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ELECTRONICALLY FILED

Superior Court of California

County of Sacramento

11/14/2024

By: A. Turner Deputy

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SACRAMENTO**

9 LEAH MALAPIT, INFINITY PRICE, and
10 LAURA MACIAS, individuals, on behalf of
themselves, and on behalf of all persons similarly
11 situated, and on behalf of the State of California,
as private attorneys general,

12
13 Plaintiffs,

14 vs.

15 ED DAVID CARE HOMES, INC., a corporation;
16 AIM HIGHER, INCORPORATED, a
corporation; and DOES 1 through 50, inclusive,

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18 Defendants.
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Case No. 23CV012773

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246; and
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Leal Malapit, Infinity Price, and Laura Macias (“PLAINTIFFS”), individuals,
2 on behalf of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following.

5 6 **THE PARTIES**

7 1. Defendant Ed David Care Homes, Inc. (“DEFENDANT”) is a corporation that
8 at all relevant times mentioned herein conducted and continues to conduct substantial business
9 in California.

10 2. Defendant Aim Higher, Incorporated (“DEFENDANT”) is a corporation that at
11 all relevant times mentioned herein conducted and continues to conduct substantial business in
12 California.

13 3. Ed David Care Homes, Inc. and Aim Higher, Incorporated were the joint
14 employers of PLAINTIFFS as evidenced by pay check and by company PLAINTIFFS
15 performed worked for respectively, and are therefore jointly responsible as employers for the
16 conduct alleged herein, and are therefore collectively referred to herein as (“DEFENDANT”).

17 4. DEFENDANT provides home health care services and adult development services
18 in California.

19 5. Plaintiff Malapit was employed by DEFENDANT in California from May 9, 2022
20 to June 7, 2023. Plaintiff Malapit was at all times classified by DEFENDANT as a non-exempt
21 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
22 payment of minimum and overtime wages due for all time worked.

23 6. Plaintiff Price was employed by DEFENDANT in California from October 2022
24 to April 2023. Plaintiff Price was at all times classified by DEFENDANT as a non-exempt
25 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
26 payment of minimum and overtime wages due for all time worked.

27 7. Plaintiff Macias has been employed by DEFENDANT in California since June
28 19, 2021. Plaintiff Macias has been at all times classified by DEFENDANT as a non-exempt

1 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
2 payment of minimum and overtime wages due for all time worked.

3 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California
4 class, defined as all individuals who are or previously were employed by Ed David Care Homes,
5 Inc. and/or Aim Higher, Incorporated in California, including any employees staffed with Ed
6 David Care Homes, Inc. and/or Aim Higher, Incorporated by a third party, and classified as
7 non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
8 on December 5, 2019 and ending on the date as determined by the Court (the "CALIFORNIA
9 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
10 CLASS Members is under five million dollars (\$5,000,000.00).

11 9. PLAINTIFFS bring this Class Action on behalf of themselves and a
12 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
13 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's
14 policy and practice which failed to lawfully compensate these employees. DEFENDANT's
15 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
16 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFFS and the
17 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
18 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
19 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA
20 CLASS who have been economically injured by DEFENDANT's past and current unlawful
21 conduct, and all other appropriate legal and equitable relief.

22 10. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
24 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
25 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
26 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
27 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
28 information and belief allege, that the Defendants named in this Complaint, including DOES

1 1 through 50, inclusive, are responsible in some manner for one or more of the events and
2 happenings that proximately caused the injuries and damages hereinafter alleged.

3 11. The agents, servants and/or employees of the Defendants and each of them
4 acting on behalf of the Defendants acted within the course and scope of his, her or its
5 authority as the agent, servant and/or employee of the Defendants, and personally
6 participated in the conduct alleged herein on behalf of the Defendants with respect to the
7 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
8 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and
9 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
10 of the conduct of the Defendants' agents, servants and/or employees.

11 12 THE CONDUCT

13 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
14 was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time
15 worked, meaning the time during which an employee is subject to the control of an
16 employer, including all the time the employee is suffered or permitted to work.
17 DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work
18 without paying them for all the time they are under DEFENDANT's control. Among other
19 things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is
20 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFFS were from time to time
21 interrupted by work assignments while clocked out for what should have been
22 PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company
23 policy and procedure, administers a uniform practice of rounding the actual time worked and
24 recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of
25 DEFENDANT, so that during the course of their employment, PLAINTIFFS and
26 CALIFORNIA CLASS Members are paid less than they would have been paid had they
27 been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT
28 engages in the practice of requiring PLAINTIFFS and CALIFORNIA CLASS Members to

1 perform work off the clock in that DEFENDANT, as a condition of employment, required
2 these employees to submit to mandatory temperature checks and symptom questionnaires for
3 COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the
4 workday. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit
5 minimum wage, overtime wage compensation, and off-duty meal breaks by working without
6 their time being correctly recorded and without compensation at the applicable rates.

7 DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA
8 CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

9 13. State and federal law provides that employees must be paid overtime and meal
10 and rest break premiums at one-and-one-half times their "regular rate of pay."
11 PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly rate
12 plus incentive pay that is tied to specific elements of an employee's performance.

13 14. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
14 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
15 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
16 performance for DEFENDANT. The non-discretionary incentive program provided all
17 employees paid on an hourly basis with incentive compensation when the employees met the
18 various performance goals set by DEFENDANT. However, when calculating the regular
19 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and
20 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
21 compensation as part of the employees' "regular rate of pay" for purposes of calculating
22 overtime pay and meal and rest break premium pay. Management and supervisors described
23 the incentive program to potential and new employees as part of the compensation package.
24 As a matter of law, the incentive compensation received by PLAINTIFFS and other
25 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
26 to do so has resulted in a underpayment of overtime compensation and meal and rest break
27 premiums to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANT.
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1 15. As a result of their rigorous work schedules, PLAINTIFFS and other
2 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
3 off duty meal breaks and were not fully relieved of duty for their meal periods.
4 PLAINTIFFS and other CALIFORNIA CLASS Members were required from time to time
5 to perform work as ordered by DEFENDANT for more than five (5) hours during some
6 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
7 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal
8 period for some workdays in which these employees were required by DEFENDANT to
9 work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the
10 meal period times to avoid paying penalties to PLAINTIFFS and other CALIFORNIA
11 CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS
12 therefore forfeit meal breaks without additional compensation and in accordance with
13 DEFENDANT's corporate policy and practice.

14 16. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
15 CALIFORNIA CLASS Members were also required from time to time to work in excess of
16 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
17 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
18 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
19 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
20 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
21 worked of ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA
22 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
23 the applicable California Wage Order requires employers to provide employees with off-
24 duty rest periods, which the California Supreme Court defined as time during which an
25 employee is relieved from all work related duties and free from employer control. In so
26 doing, the Court held that the requirement under California law that employers authorize and
27 permit all employees to take rest period means that employers must relieve employees of all
28 duties and relinquish control over how employees spend their time which includes control

1 over the locations where employees may take their rest period. Employers cannot impose
2 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
3 back. Here, DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA
4 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
5 which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the
6 work premises during their rest period.

7 17. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
8 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
9 actual amount of time these employees worked. Pursuant to the Industrial Welfare
10 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
11 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
12 employee was subject to the control of an employer, including all the time the employee was
13 permitted or suffered to permit this work. DEFENDANT required these employees to work
14 off the clock without paying them for all the time they were under DEFENDANT's control.
15 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
17 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
18 working without their time being accurately recorded and without compensation at the
19 applicable minimum wage and overtime wage rates. To the extent that the time worked off
20 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
21 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
22 1197, and 1197.1.

23 18. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
24 other members of the CALIFORNIA CLASS with complete and accurate wage statements
25 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
26 Code § 226 provides that every employer shall furnish each of his or her employees with an
27 accurate itemized wage statement in writing showing, among other things, gross wages
28 earned and all applicable hourly rates in effect during the pay period and the corresponding

1 amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS
2 Members were paid on an hourly basis. As such, the wage statements should reflect all
3 applicable hourly rates during the pay period and the total hours worked, and the applicable
4 pay period in which the wages were earned pursuant to California Labor Code Section
5 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and other
6 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
7 wage statements failed to identify the accurate total hours worked each pay period. When
8 the hours shown on the wage statements were added up, they did not equal the actual total
9 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
10 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS
11 an itemized wage statement that lists all the requirements under California Labor Code 226
12 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
14 § 226.

15 19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
16 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
17 the wages are paid not more than seven (7) calendar days following the close of the payroll
18 period. Cal. Lab. Code § 210 provides:

19 in [I]n addition to, and entirely independent and apart from, any other penalty provided
20 this article, every person who fails to pay the wages of each employee as provided in
21 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
22 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

23 20. DEFENDANT from time to time failed to pay PLAINTIFFS and members of
24 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
25 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
26 the “Hourly” regular wage payments.

27 21. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
28 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in

1 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
2 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
3 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA
4 CLASS Members at their base rates of pay.

5 22. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
6 employees be calculated by dividing the employee's total wages, not including overtime
7 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
8 days of employment.

9 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
10 at the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely
11 earned non-discretionary incentive wages which increased their regular rate of pay.
12 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and
13 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
14 as required under Cal. Lab. Code Section 246.

15 24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS
16 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
17 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are
18 informed and believe and based thereon allege that such failure to pay sick pay at regular
19 rate was willful, such that PLAINTIFFS and members of the CALIFORNIA CLASS whose
20 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
21 Sections 201-203.

22 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
23 to collect or receive from an employee any part of wages theretofore paid by said employer
24 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and
25 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
26 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
27 Members, failed to disclose all aspects of the deductions from compensation payable to
28 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to

1 pay these employees all wages due at each applicable pay period and upon termination.
2 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of
3 all illegal deductions from wages according to proof, related penalties, interest, attorney fees
4 and costs.

5 26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
6 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
7 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct
8 consequence of discharging their duties on behalf of DEFENDANT. Under California
9 Labor Code Section 2802, employers are required to indemnify employees for all expenses
10 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
11 states that "an employer shall indemnify his or her employee for all necessary expenditures
12 or losses incurred by the employee in direct consequence of the discharge of his or her
13 duties, or of his or her obedience to the directions of the employer, even though unlawful,
14 unless the employee, at the time of obeying the directions, believed them to be unlawful."

15 27. In the course of their employment PLAINTIFFS and other CALIFORNIA
16 CLASS Members as a business expense, were required by DEFENDANT to use their own
17 personal cellular phones as a result of and in furtherance of their job duties as employees for
18 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
19 associated with the use of their personal cellular phones for DEFENDANT's benefit.
20 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
21 DEFENDANT to use their personal cellular phones. As a result, in the course of their
22 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
23 CLASS incurred unreimbursed business expenses which included, but were not limited to,
24 costs related to the use of their personal cellular phones all on behalf of and for the benefit
25 of DEFENDANT.

26 28. In violation of the applicable sections of the California Labor Code and the
27 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
28 DEFENDANT as a matter of company policy, practice and procedure, intentionally,

1 knowingly and systematically failed to provide PLAINTIFFS and the other Aggrieved
2 Employees suitable seating when the nature of these employees' work reasonably permitted
3 sitting.

4 29. DEFENDANT knew or should have known that PLAINTIFFS and other
5 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
6 not interfere with the performance of their duties, and that DEFENDANT did not provide
7 suitable seating and/or did not allow them to sit when it did not interfere with the
8 performance of their duties.

9 30. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved
10 Employees, DEFENDANT violated California Labor Code Section 1198 and California
11 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
12 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on
13 behalf of PLAINTIFFS and other Aggrieved Employees as provided herein. Providing
14 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
15 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
16 Code and regulations promulgated thereunder as herein alleged.

17 31. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the
18 legally required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable
19 Wage Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime
20 wages due to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided
21 timely off-duty meal and rest breaks to PLAINTIFFS and also failed to compensate
22 PLAINTIFFS for PLAINTIFFS' missed meal and rest breaks. The nature of the work
23 performed by the PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of
24 PLAINTIFFS' duties for the legally required off-duty meal periods. As a result,
25 DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is
26 evidenced by DEFENDANT's business records. The amount in controversy for
27 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

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1 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage
3 Order requirements, and the applicable provisions of California law, intentionally,
4 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
5 meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members,
6 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
7 this work and permits or suffers to permit this work.

8 37. DEFENDANT has the legal burden to establish that each and every
9 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
10 required by California laws. The DEFENDANT, however, as a matter of policy and
11 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
12 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
13 Member is paid as required by law. This common business practice is applicable to each
14 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
15 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
16 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

17 38. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 39. DEFENDANT violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
22 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
23 and/or deceptively having in place company policies, practices and
24 procedures that failed to record and pay PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS for all time worked, including
26 minimum wages owed and overtime wages owed for work performed
27 by these employees; and,
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- 1 (b) Committing an act of unfair competition in violation of the UCL, by
2 failing to provide the PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

4 40. This Class Action meets the statutory prerequisites for the maintenance of a
5 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 6 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
7 that the joinder of all such persons is impracticable and the disposition
8 of their claims as a class will benefit the parties and the Court;
- 9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
10 issues that are raised in this Complaint are common to the
11 CALIFORNIA CLASS will apply to every member of the
12 CALIFORNIA CLASS;
- 13 (c) The claims of the representative PLAINTIFFS are typical of the claims
14 of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all
15 the other members of the CALIFORNIA CLASS, were classified as
16 non-exempt employees paid on an hourly basis who were subjected to
17 the DEFENDANT's deceptive practice and policy which failed to
18 provide the legally required meal and rest periods to the CALIFORNIA
19 CLASS and thereby underpaid compensation to PLAINTIFFS and
20 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
21 result of DEFENDANT's employment practices. PLAINTIFFS and the
22 members of the CALIFORNIA CLASS were and are similarly or
23 identically harmed by the same unlawful, deceptive and unfair
24 misconduct engaged in by DEFENDANT; and,
- 25 (d) The representative PLAINTIFFS will fairly and adequately represent
26 and protect the interest of the CALIFORNIA CLASS, and have
27 retained counsel who are competent and experienced in Class Action
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1 litigation. There are no material conflicts between the claims of the
2 representative PLAINTIFFS and the members of the CALIFORNIA
3 CLASS that would make class certification inappropriate. Counsel for
4 the CALIFORNIA CLASS will vigorously assert the claims of all
5 CALIFORNIA CLASS Members.

6 41. In addition to meeting the statutory prerequisites to a Class Action, this action
7 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

8 (a) Without class certification and determination of declaratory, injunctive,
9 statutory and other legal questions within the class format, prosecution
10 of separate actions by individual members of the CALIFORNIA
11 CLASS will create the risk of:

12 1) Inconsistent or varying adjudications with respect to individual
13 members of the CALIFORNIA CLASS which would establish
14 incompatible standards of conduct for the parties opposing the
15 CALIFORNIA CLASS; and/or,

16 2) Adjudication with respect to individual members of the
17 CALIFORNIA CLASS which would as a practical matter be
18 dispositive of interests of the other members not party to the
19 adjudication or substantially impair or impede their ability to
20 protect their interests.

21 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
22 to act on grounds generally applicable to the CALIFORNIA CLASS,
23 making appropriate class-wide relief with respect to the CALIFORNIA
24 CLASS as a whole in that DEFENDANT failed to pay all wages due to
25 members of the CALIFORNIA CLASS as required by law;

26 1) With respect to the First Cause of Action, the final relief on
27 behalf of the CALIFORNIA CLASS sought does not relate
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1 exclusively to restitution because through this claim
2 PLAINTIFFS seek declaratory relief holding that the
3 DEFENDANT's policy and practices constitute unfair
4 competition, along with declaratory relief, injunctive relief, and
5 incidental equitable relief as may be necessary to prevent and
6 remedy the conduct declared to constitute unfair competition;

7 (c) Common questions of law and fact exist as to the members of the
8 CALIFORNIA CLASS, with respect to the practices and violations of
9 California law as listed above, and predominate over any question
10 affecting only individual CALIFORNIA CLASS Members, and a Class
11 Action is superior to other available methods for the fair and efficient
12 adjudication of the controversy, including consideration of:

- 13 1) The interests of the members of the CALIFORNIA CLASS in
14 individually controlling the prosecution or defense of separate
15 actions in that the substantial expense of individual actions will
16 be avoided to recover the relatively small amount of economic
17 losses sustained by the individual CALIFORNIA CLASS
18 Members when compared to the substantial expense and burden
19 of individual prosecution of this litigation;
- 20 2) Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:
 - 22 A. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA CLASS, which
24 would establish incompatible standards of conduct for the
25 DEFENDANT; and/or,
 - 26 B. Adjudications with respect to individual members of the
27 CALIFORNIA CLASS would as a practical matter be
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dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

42. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members

1 will avoid asserting their rights individually out of fear of retaliation or
2 adverse impact on their employment;

3 (c) The members of the CALIFORNIA CLASS are so numerous that it is
4 impractical to bring all members of the CALIFORNIA CLASS before
5 the Court;

6 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
7 be able to obtain effective and economic legal redress unless the action
8 is maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and
10 equitable relief for the acts of unfair competition, statutory violations
11 and other improprieties, and in obtaining adequate compensation for
12 the damages and injuries which DEFENDANT's actions have inflicted
13 upon the CALIFORNIA CLASS;

14 (f) There is a community of interest in ensuring that the combined assets of
15 DEFENDANT are sufficient to adequately compensate the members of
16 the CALIFORNIA CLASS for the injuries sustained;

17 (g) DEFENDANT has acted or refused to act on grounds generally
18 applicable to the CALIFORNIA CLASS, thereby making final class-
19 wide relief appropriate with respect to the CALIFORNIA CLASS as a
20 whole;

21 (h) The members of the CALIFORNIA CLASS are readily ascertainable
22 from the business records of DEFENDANT; and,

23 (i) Class treatment provides manageable judicial treatment calculated to
24 bring a efficient and rapid conclusion to all litigation of all wage and
25 hour related claims arising out of the conduct of DEFENDANT as to
26 the members of the CALIFORNIA CLASS.
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1 43. DEFENDANT maintains records from which the Court can ascertain and
2 identify by job title each of DEFENDANT's employees who have been intentionally
3 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
4 PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of
5 similarly situated employees when they have been identified.

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

8 44. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh,
9 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
10 of the CALIFORNIA CLASS who are or previously were employed by Ed David Care
11 Homes, Inc. and/or Aim Higher, Incorporated in California, including any employees staffed
12 with Ed David Care Homes, Inc. and/or Aim Higher, Incorporated by a third party, and
13 classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
14 time during the period beginning on December 5, 2020 and ending on the date as determined
15 by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code
16 of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA
17 LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

18 45. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
19 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
20 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
21 failed to correctly calculate compensation for the time worked by PLAINTIFFS and the
22 other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed
23 to these employees, even though DEFENDANT enjoyed the benefit of this work, required
24 employees to perform this work and permitted or suffered to permit this work.
25 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
26 which these employees are entitled in order to unfairly cheat the competition and unlawfully
27 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
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1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

3 46. DEFENDANT maintains records from which the Court can ascertain and
4 identify by name and job title, each of DEFENDANT's employees who have been
5 intentionally subjected to DEFENDANT's company policy, practices and procedures as
6 herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any
7 additional job titles of similarly situated employees when they have been identified.

8 47. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

10 48. Common questions of law and fact exist as to members of the CALIFORNIA
11 LABOR SUB-CLASS, including, but not limited, to the following:

- 12 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 compensation due to members of the CALIFORNIA LABOR SUB-
14 CLASS for missed meal and rest breaks in violation of the California
15 Labor Code and California regulations and the applicable California
16 Wage Order;
- 17 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the
18 other members of the CALIFORNIA LABOR SUB-CLASS with
19 accurate itemized wage statements;
- 20 (c) Whether DEFENDANT has engaged in unfair competition by the
21 above-listed conduct;
- 22 (d) The proper measure of damages and penalties owed to the members of
23 the CALIFORNIA LABOR SUB-CLASS; and,
- 24 (e) Whether DEFENDANT's conduct was willful.

25 49. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
26 CLASS under California law by:
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- 1 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
2 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
3 CLASS all wages due for overtime worked, for which DEFENDANT is
4 liable pursuant to Cal. Lab. Code § 1194;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
6 accurately pay PLAINTIFFS and the members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wage pay for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
10 the members of the CALIFORNIA LABOR SUB-CLASS with an
11 accurate itemized statement in writing showing the corresponding
12 correct amount of wages earned by the employee;
- 13 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
14 PLAINTIFFS and the other members of the CALIFORNIA LABOR
15 SUB-CLASS with all legally required off-duty, uninterrupted thirty
16 (30) minute meal breaks and the legally required off-duty rest breaks;
- 17 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
18 when an employee is discharged or quits from employment, the
19 employer must pay the employee all wages due without abatement, by
20 failing to tender full payment and/or restitution of wages owed or in the
21 manner required by California law to the members of the
22 CALIFORNIA LABOR SUB-CLASS who have terminated their
23 employment; and,
- 24 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
25 and the CALIFORNIA LABOR SUB-CLASS members with necessary
26 expenses incurred in the discharge of their job duties.
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1 50. This Class Action meets the statutory prerequisites for the maintenance of a
2 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 3 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
4 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
5 CLASS Members is impracticable and the disposition of their claims as
6 a class will benefit the parties and the Court;
- 7 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
8 issues that are raised in this Complaint are common to the
9 CALIFORNIA LABOR SUB-CLASS and will apply to every member
10 of the CALIFORNIA LABOR SUB-CLASS;
- 11 (c) The claims of the representative PLAINTIFFS are typical of the claims
12 of each member of the CALIFORNIA LABOR SUB-CLASS.
13 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
14 SUB-CLASS, were non-exempt employees paid on an hourly basis who
15 were subjected to the DEFENDANT's practice and policy which failed
16 to pay the correct amount of wages due to the CALIFORNIA LABOR
17 SUB-CLASS. PLAINTIFFS sustained economic injury as a result of
18 DEFENDANT's employment practices. PLAINTIFFS and the
19 members of the CALIFORNIA LABOR SUB-CLASS were and are
20 similarly or identically harmed by the same unlawful, deceptive, and
21 unfair misconduct engaged in by DEFENDANT; and,
- 22 (d) The representative PLAINTIFFS will fairly and adequately represent
23 and protect the interest of the CALIFORNIA LABOR SUB-CLASS,
24 and have retained counsel who are competent and experienced in Class
25 Action litigation. There are no material conflicts between the claims of
26 the representative PLAINTIFFS and the members of the
27 CALIFORNIA LABOR SUB-CLASS that would make class
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1 certification inappropriate. Counsel for the CALIFORNIA LABOR
2 SUB-CLASS will vigorously assert the claims of all CALIFORNIA
3 LABOR SUB-CLASS Members.

4 51. In addition to meeting the statutory prerequisites to a Class Action, this action
5 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

6 (a) Without class certification and determination of declaratory, injunctive,
7 statutory and other legal questions within the class format, prosecution
8 of separate actions by individual members of the CALIFORNIA
9 LABOR SUB-CLASS will create the risk of:

10 1) Inconsistent or varying adjudications with respect to individual
11 members of the CALIFORNIA LABOR SUB-CLASS which
12 would establish incompatible standards of conduct for the
13 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

14 2) Adjudication with respect to individual members of the
15 CALIFORNIA LABOR SUB-CLASS which would as a
16 practical matter be dispositive of interests of the other members
17 not party to the adjudication or substantially impair or impede
18 their ability to protect their interests.

19 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
20 acted or refused to act on grounds generally applicable to the
21 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
22 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
23 whole in that DEFENDANT fails to pay all wages due. Including the
24 correct wages for all time worked by the members of the
25 CALIFORNIA LABOR SUB-CLASS as required by law;

26 (c) Common questions of law and fact predominate as to the members of
27 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
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1 and violations of California Law as listed above, and predominate over
2 any question affecting only individual CALIFORNIA LABOR SUB-
3 CLASS Members, and a Class Action is superior to other available
4 methods for the fair and efficient adjudication of the controversy,
5 including consideration of:

- 6 1) The interests of the members of the CALIFORNIA LABOR
7 SUB-CLASS in individually controlling the prosecution or
8 defense of separate actions in that the substantial expense of
9 individual actions will be avoided to recover the relatively small
10 amount of economic losses sustained by the individual
11 CALIFORNIA LABOR SUB-CLASS Members when compared
12 to the substantial expense and burden of individual prosecution
13 of this litigation;
- 14 2) Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:
 - 16 A. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA LABOR SUB-
18 CLASS, which would establish incompatible standards of
19 conduct for the DEFENDANT; and/or,
 - 20 B. Adjudications with respect to individual members of the
21 CALIFORNIA LABOR SUB-CLASS would as a
22 practical matter be dispositive of the interests of the other
23 members not parties to the adjudication or substantially
24 impair or impede their ability to protect their interests;
- 25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA LABOR SUB-CLASS Members will
27 avoid asserting their legal rights out of fear of retaliation by
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1 DEFENDANT, which may adversely affect an individual's job
2 with DEFENDANT or with a subsequent employer, the Class
3 Action is the only means to assert their claims through a
4 representative; and,

- 5 4) A class action is superior to other available methods for the fair
6 and efficient adjudication of this litigation because class
7 treatment will obviate the need for unduly and unnecessary
8 duplicative litigation that is likely to result in the absence of
9 certification of this action pursuant to Cal. Code of Civ. Proc. §
10 382.

11 52. This Court should permit this action to be maintained as a Class Action
12 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 13 (a) The questions of law and fact common to the CALIFORNIA LABOR
14 SUB-CLASS predominate over any question affecting only individual
15 CALIFORNIA LABOR SUB-CLASS Members;
- 16 (b) A Class Action is superior to any other available method for the fair
17 and efficient adjudication of the claims of the members of the
18 CALIFORNIA LABOR SUB-CLASS because in the context of
19 employment litigation a substantial number of individual
20 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
21 their rights individually out of fear of retaliation or adverse impact on
22 their employment;
- 23 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
24 numerous that it is impractical to bring all members of the
25 CALIFORNIA LABOR SUB-CLASS before the Court;
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- 1 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
2 Members, will not be able to obtain effective and economic legal
3 redress unless the action is maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations
6 and other improprieties, and in obtaining adequate compensation for
7 the damages and injuries which DEFENDANT's actions have inflicted
8 upon the CALIFORNIA LABOR SUB-CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally
13 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
14 making final class-wide relief appropriate with respect to the
15 CALIFORNIA LABOR SUB-CLASS as a whole;
- 16 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
17 ascertainable from the business records of DEFENDANT. The
18 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
19 CLASS Members who worked for DEFENDANT in California at any
20 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to
22 bring a efficient and rapid conclusion to all litigation of all wage and
23 hour related claims arising out of the conduct of DEFENDANT as to
24 the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

5 53. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
6 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
7 this Complaint.

8 54. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 55. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
11 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
12 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
13 unfair competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver,
17 as may be necessary to prevent the use or employment by any person of any
18 practice which constitutes unfair competition, as defined in this chapter, or as
19 may be necessary to restore to any person in interest any money or property,
20 real or personal, which may have been acquired by means of such unfair
21 competition.

22 Cal. Bus. & Prof. Code § 17203.

23 56. By the conduct alleged herein, DEFENDANT has engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Industrial Wage Order(s), the California Code of Regulations and the California
26 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
27 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
28 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
held to constitute unfair competition, including restitution of wages wrongfully withheld.

1 57. By the conduct alleged herein, DEFENDANT's practices were unlawful and
2 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to employees, and were without valid justification or
4 utility for which this Court should issue equitable and injunctive relief pursuant to Section
5 17203 of the California Business & Professions Code, including restitution of wages
6 wrongfully withheld.

7 58. By the conduct alleged herein, DEFENDANT's practices were deceptive and
8 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
9 meal and rest periods, the required amount of compensation for missed meal and rest
10 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
11 reimburse all necessary business expenses incurred, and failed to provide Fair Labor
12 Standards Act overtime wages due for overtime worked as a result of failing to include non-
13 discretionary incentive compensation into their regular rates of pay for purposes of
14 computing the proper overtime pay due to a business practice that cannot be justified,
15 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
16 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
17 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
18 restitution of wages wrongfully withheld.

19 59. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
20 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS
21 and the other members of the CALIFORNIA CLASS to be underpaid during their
22 employment with DEFENDANT.

23 60. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
25 provide all legally required meal breaks to PLAINTIFFS and the other members of the
26 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

1 61. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of
2 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an
3 off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
4 hour of pay for each workday in which a second off-duty meal period was not timely
5 provided for each ten (10) hours of work.

6 62. PLAINTIFFS further demand on behalf of themselves and each member of the
7 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
8 duty paid rest period was not timely provided as required by law.

9 63. By and through the unlawful and unfair business practices described herein,
10 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and
11 the other members of the CALIFORNIA CLASS, including earned wages for all time
12 worked, and has deprived them of valuable rights and benefits guaranteed by law and
13 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
14 allow DEFENDANT to unfairly compete against competitors who comply with the law.

15 64. All the acts described herein as violations of, among other things, the
16 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
17 California Labor Code, were unlawful and in violation of public policy, were immoral,
18 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
19 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
20 *seq.*

21 65. PLAINTIFFS and the other members of the CALIFORNIA CLASS are
22 entitled to, and do, seek such relief as may be necessary to restore to them the money and
23 property which DEFENDANT has acquired, or of which PLAINTIFFS and the other
24 members of the CALIFORNIA CLASS have been deprived, by means of the above
25 described unlawful and unfair business practices, including earned but unpaid wages for all
26 time worked.

1 66. PLAINTIFFS and the other members of the CALIFORNIA CLASS are
2 further entitled to, and do, seek a declaration that the described business practices are
3 unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
4 DEFENDANT from engaging in any unlawful and unfair business practices in the future.

5 67. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no
6 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
7 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
8 unabated. As a result of the unlawful and unfair business practices described herein,
9 PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will
10 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
11 from continuing to engage in these unlawful and unfair business practices.

12
13 **SECOND CAUSE OF ACTION**

14 **For Failure To Pay Minimum Wages**

15 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

16 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

18 68. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 69. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
22 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
23 California Labor Code and the Industrial Welfare Commission requirements for
24 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS
25 and CALIFORNIA CLASS Members.

26 70. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
27 public policy, an employer must timely pay its employees for all hours worked.
28

1 71. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
2 the commission is the minimum wage to be paid to employees, and the payment of a less
3 wage than the minimum so fixed is unlawful.

4 72. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
5 wages, including minimum wage compensation and interest thereon, together with the costs
6 of suit.

7 73. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the
8 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
9 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
10 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
11 other members of the CALIFORNIA LABOR SUB-CLASS.

12 74. DEFENDANT's unlawful wage and hour practices manifested, without
13 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
14 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
15 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
16 wage pay.

17 75. In committing these violations of the California Labor Code, DEFENDANT
18 inaccurately calculated the correct time worked and consequently underpaid the actual time
19 worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS.
20 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
21 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
22 requirements and other applicable laws and regulations.

23 76. As a direct result of DEFENDANT's unlawful wage practices as alleged
24 herein, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
25 did not receive the correct minimum wage compensation for their time worked for
26 DEFENDANT.
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1 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
2 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
3 Members to work without paying them for all the time they were under DEFENDANT's
4 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
5 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
6 that they were entitled to, constituting a failure to pay all earned wages.

7 78. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
8 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
9 CLASS for the true time they worked, PLAINTIFFS and the other members of the
10 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
11 economic injury in amounts which are presently unknown to them and which will be
12 ascertained according to proof at trial.

13 79. DEFENDANT knew or should have known that PLAINTIFFS and the other
14 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
15 time worked. DEFENDANT elected, either through intentional malfeasance or gross
16 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
17 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
18 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
19 wages for their time worked.

20 80. In performing the acts and practices herein alleged in violation of California
21 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
22 CLASS for all time worked and provide them with the requisite compensation,
23 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
24 toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
25 with a conscious and utter disregard for their legal rights, or the consequences to them, and
26 with the despicable intent of depriving them of their property and legal rights, and otherwise
27 causing them injury in order to increase company profits at the expense of these employees.
28

1 81. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
2 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
3 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
4 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
5 extent minimum wage compensation is determined to be owed to the CALIFORNIA
6 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
7 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
8 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
9 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
10 conduct as alleged herein was willful, intentional and not in good faith. Further,
11 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
12 and recover statutory costs.

13
14 **THIRD CAUSE OF ACTION**

15 **For Failure To Pay Overtime Compensation**

16 **[Cal. Lab. Code § 510]**

17 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **Defendants)**

19 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
20 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
21 paragraphs of this Complaint.

22 83. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
23 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
24 California Labor Code and the Industrial Welfare Commission requirements for
25 DEFENDANT's failure to pay these employees for all overtime worked, including, work
26 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
27 and/or forty (40) hours in any workweek.
28

1 84. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

3 85. Cal. Lab. Code § 510 further provides that employees in California shall not
4 be employed more than eight (8) hours per workday and more than forty (40) hours per
5 workweek unless they receive additional compensation beyond their regular wages in
6 amounts specified by law.

7 86. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
8 wages, including minimum wage and overtime compensation and interest thereon, together
9 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
10 employee for longer hours than those fixed by the Industrial Welfare Commission is
11 unlawful.

12 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
13 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
14 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
15 including overtime work.

16 88. DEFENDANT's unlawful wage and hour practices manifested, without
17 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
18 implementing a policy and practice that failed to accurately record overtime worked by
19 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
20 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
21 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in
22 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty
23 (40) hours in any workweek.

24 89. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
26 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
27 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
28

1 violation of the California Labor Code, the Industrial Welfare Commission requirements
2 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
3 wage practices as alleged herein, the PLAINTIFFS and the other members of the
4 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
5 worked.

6 90. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
7 from the overtime requirements of the law. None of these exemptions are applicable to the
8 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
9 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not
10 subject to a valid collective bargaining agreement that would preclude the causes of action
11 contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of
12 themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's
13 violations of non-negotiable, non-waiveable rights provided by the State of California.

14 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS
15 and the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
16 overtime worked that they are entitled to, constituting a failure to pay all earned wages.

17 92. DEFENDANT failed to accurately pay the PLAINTIFFS and the other
18 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
19 worked which was in excess of the maximum hours permissible by law as required by Cal.
20 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFFS and the other members of the
21 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
22 as to which DEFENDANT failed to accurately record and pay as evidenced by
23 DEFENDANT's business records and witnessed by employees.

24 93. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
25 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of
27 the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
28

1 economic injury in amounts which are presently unknown to them and which will be
2 ascertained according to proof at trial.

3 94. DEFENDANT knew or should have known that PLAINTIFFS and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
5 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
7 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
8 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

9 95. In performing the acts and practices herein alleged in violation of California
10 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
11 CLASS for all overtime worked and provide them with the requisite overtime compensation,
12 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
13 toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
14 with a conscious of and utter disregard for their legal rights, or the consequences to them,
15 and with the despicable intent of depriving them of their property and legal rights, and
16 otherwise causing them injury in order to increase company profits at the expense of these
17 employees.

18 96. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
19 CLASS therefore request recovery of all overtime wages, according to proof, interest,
20 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
21 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
22 extent minimum and/or overtime compensation is determined to be owed to the
23 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
24 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
25 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
26 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
27 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
28

1 good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
2 Members are entitled to seek and recover statutory costs.

3
4 **FOURTH CAUSE OF ACTION**

5 **For Failure to Provide Required Meal Periods**

6 **[Cal. Lab. Code §§ 226.7 & 512]**

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 97. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
11 paragraphs of this Complaint.

12 98. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
13 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other
14 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
15 and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA
16 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
17 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
18 work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members
19 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
20 Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA
21 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
22 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
23 DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a
24 second off-duty meal period in some workdays in which these employees were required by
25 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFFS
26 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
27
28

1 breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice.

3 99. DEFENDANT further violates California Labor Code §§ 226.7 and the
4 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
5 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
6 the applicable Wage Order, one additional hour of compensation at each employee's regular
7 rate of pay for each workday that a meal period was not provided.

8 100. As a proximate result of the aforementioned violations, PLAINTIFFS and
9 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
10 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
11 suit.

12
13 **FIFTH CAUSE OF ACTION**

14 **For Failure to Provide Required Rest Periods**

15 **[Cal. Lab. Code §§ 226.7 & 512]**

16 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
17 **Defendants)**

18 101. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 102. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
22 from time to time required to work in excess of four (4) hours without being provided ten
23 (10) minute rest periods. Further, these employees from time to time were denied their first
24 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
25 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
26 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
27 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

28 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not

1 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
2 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically
3 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

4 103. DEFENDANT further violated California Labor Code §§ 226.7 and the
5 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
6 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
7 the applicable Wage Order, one additional hour of compensation at each employee's regular
8 rate of pay for each workday that rest period was not provided.

9 104. As a proximate result of the aforementioned violations, PLAINTIFFS and
10 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
11 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
12 suit.

13 **SIXTH CAUSE OF ACTION**

14 **For Failure to Provide Accurate Itemized Statements**

15 **[Cal. Lab. Code § 226]**

16 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
17 **Defendants)**

18 105. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 106. Cal. Labor Code § 226 provides that an employer must furnish employees with
22 an "accurate itemized" statement in writing showing:

- 23 (1) gross wages earned,
24 (2) total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission,
28 (3) the number of piece-rate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,
(5) net wages earned,

1 (6) the inclusive dates of the period for which the employee is paid,
2 (7) the name of the employee and his or her social security number, except that by
3 January 1, 2008, only the last four digits of his or her social security number or an
4 employee identification number other than a social security number may be shown on
5 the itemized statement,
6 (8) the name and address of the legal entity that is the employer, and
7 (9) all applicable hourly rates in effect during the pay period and the corresponding
8 number of hours worked at each hourly rate by the employee.

9 107. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
10 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
11 wage statements which failed to show, among other things, the correct gross and net wages
12 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
13 employees with an accurate itemized wage statement in writing showing, among other
14 things, gross wages earned and all applicable hourly rates in effect during the pay period and
15 the corresponding amount of time worked at each hourly rate. PLAINTIFFS and
16 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
17 wage statements should reflect all applicable hourly rates during the pay period and the total
18 hours worked, and the applicable pay period in which the wages were earned pursuant to
19 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
20 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
21 such information. More specifically, the wage statements failed to identify the accurate total
22 hours worked each pay period. When the hours shown on the wage statements were added
23 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
24 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
25 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
26 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
27 to time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
28 CLASS with wage statements which violated Cal. Lab. Code § 226.

108. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

1 expended calculating the correct wages for all missed meal and rest breaks and the amount
2 of employment taxes which were not properly paid to state and federal tax authorities.
3 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
4 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
5 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
6 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
7 226, in an amount according to proof at the time of trial (but in no event more than four
8 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
9 CALIFORNIA LABOR SUB-CLASS herein).

10 11 **SEVENTH CAUSE OF ACTION**

12 **For Failure to Reimburse Employees for Required Expenses**

13 **[Cal. Lab. Code § 2802]**

14 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
15 **Defendants)**

16 109. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members
17 reallege and incorporate by this reference, as though fully set forth herein, the prior
18 paragraphs of this Complaint.

19 110. Cal. Lab. Code § 2802 provides, in relevant part, that:

20 An employer shall indemnify his or her employee for all necessary
21 expenditures or losses incurred by the employee in direct consequence of the
22 discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

23 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
24 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
25 CLASS members for required expenses incurred in the discharge of their job duties for
26 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
27 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
28

1 limited to, costs related to using their personal cellular phones on behalf of and for the
2 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
3 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
4 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
5 and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
6 CLASS members for expenses resulting from using their personal cellular phones and home
7 offices for DEFENDANT within the course and scope of their employment for
8 DEFENDANT. These expenses were necessary to complete their principal job duties.
9 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
10 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS
11 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
12 and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
13 these expenses as an employer is required to do under the laws and regulations of California.

14 112. PLAINTIFFS therefore demand reimbursement for expenditures or losses
15 incurred by themselves and the CALIFORNIA LABOR SUB-CLASS members in the
16 discharge of their job duties for DEFENDANT, or their obedience to the directions of
17 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

18
19 **EIGHTH CAUSE OF ACTION**

20 **For Failure to Pay Wages When Due**

21 **[Cal. Lab. Code §§ 201, 202, 203]**

22 **(By Plaintiff Malapit, Plaintiff Price, and the CALIFORNIA LABOR SUB-CLASS**
23 **and Against All Defendants)**

24 113. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
25 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
26 paragraphs of this Complaint.

27 1. Cal. Lab. Code § 200 provides, in relevant part, that:

28 As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of

1 every description, whether the amount is fixed or ascertained by the
2 standard of time, task, piece, Commission basis, or other method of calculation.
3 (b) "Labor" includes labor, work, or service whether rendered or
4 performed under contract, subcontract, partnership, station plan, or other
5 agreement if the labor to be paid for is performed personally by the person
6 demanding payment.

7 114. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
8 discharges an employee, the wages earned and unpaid at the time of discharge are due and
9 payable immediately."

10 115. Cal. Lab. Code § 202 provides, in relevant part, that:

11 If an employee not having a written contract for a definite period quits his
12 or her employment, his or her wages shall become due and payable not
13 later than 72 hours thereafter, unless the employee has given 72 hours
14 previous notice of his or her intention to quit, in which case the employee
15 is entitled to his or her wages at the time of quitting. Notwithstanding any
16 other provision of law, an employee who quits without providing a 72-
17 hour notice shall be entitled to receive payment by mail if he or she so
18 requests and designates a mailing address. The date of the mailing shall
19 constitute the date of payment for purposes of the requirement to provide
20 payment within 72 hours of the notice of quitting.

21 116. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
22 SUB-CLASS Members' employment contract.

23 117. Cal. Lab. Code § 203 provides, in relevant part, that:

24 If an employer willfully fails to pay, without abatement or reduction, in
25 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
26 employee who is discharged or who quits, the wages of the employee shall
27 continue as a penalty from the due date thereof at the same rate until paid
28 or until an action therefor is commenced; but the wages shall not continue
for more than 30 days.

1 118. The employment of Plaintiff Malapit, Plaintiff Price, and many CALIFORNIA
2 LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered
3 payment of all wages owed as required by law. Additionally, at all times during the term of
4 Plaintiff Malapit's and Plaintiff Price's employment with DEFENDANT, Plaintiff Malapit,
5 Plaintiff Price, and CALIFORNIA LABOR SUB-CLASS Members earned and accrued
6 vested vacation and holiday time on the date of their termination pursuant to
7 DEFENDANT's uniform vacation policies and applicable California law. The amount of
8 vacation pay Plaintiff Malapit, Plaintiff Price, and the other CALIFORNIA LABOR

1 SUB-CLASS Members earned and accumulated is evidenced by DEFENDANT's business
2 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
3 Plaintiff Malapit, Plaintiff Price, and other CALIFORNIA LABOR SUB-CLASS
4 MEMBERS by failing to pay such wages at the regular rate of pay and more specifically the
5 final rate of pay that included all non-discretionary incentive compensation. Rather than pay
6 vacation wages at the regular rate of pay, DEFENDANT underpaid vacation wages to
7 Plaintiff Malapit, Plaintiff Price, and other CALIFORNIA LABOR SUB-CLASS Members
8 at their base rates of pay, instead of including all of Plaintiff Malapit's, Plaintiff Price's, and
9 CALIFORNIA LABOR SUB-CLASS Members' non-discretionary incentive compensation
10 into the vacation wage payment calculations. DEFENDANT failed to specify in
11 DEFENDANT's written vacation policy the rate at which Plaintiff Malapit, Plaintiff Price,
12 and other CALIFORNIA LABOR CLASS Members would be paid vacation upon leaving
13 employment with DEFENDANT. As a result of DEFENDANT's unlawful practice, policy
14 and procedure to deny paying Plaintiff Malapit, Plaintiff Price, and the other members of the
15 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
16 DEFENDANT failed to pay Plaintiff Malapit, Plaintiff Price, and the members of the
17 CALIFORNIA LABOR SUB-CLASS all vested vacation time as wages due upon
18 employment termination, in violation of the California Labor Code, Sections 201, 202, 203
19 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to Plaintiff Malapit,
20 Plaintiff Price, and other CALIFORNIA LABOR SUB-CLASS Members at their base rates
21 of pay, instead of including all of Plaintiff Malapit's, Plaintiff Price's, and the
22 CALIFORNIA LABOR SUB-CLASS Members' non-discretionary compensation into the
23 waiting time penalty calculations. This failure by DEFENDANT is believed to be the result
24 of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for
25 earned, accrued and vested vacation and holiday time, as well as the corresponding waiting
26 time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive
27 practice to the detriment of Plaintiff Malapit, Plaintiff Price, and the members of the
28

1 CALIFORNIA LABOR SUB-CLASS. DEFENDANT's uniform practice and policy of
2 failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday time
3 accumulated at employment termination violated and continues to violate Section 227.3 of
4 the California Labor Code.

5 119. Therefore, as provided by Cal Lab. Code § 203, on behalf of Plaintiff Malapit,
6 Plaintiff Price, and the members of the CALIFORNIA LABOR SUB-CLASS whose
7 employment has terminated and who have not been fully paid their wages due to them,
8 Plaintiff Malapit and Plaintiff Price demand thirty days of pay as penalty for not paying all
9 wages due at time of termination for all employees who terminated employment during the
10 CALIFORNIA LABOR SUB-CLASS PERIOD and demand an accounting and payment of
11 all wages due, plus interest and statutory costs as allowed by law.

12
13 **NINTH CAUSE OF ACTION**

14 **For Failure to Pay Sick Pay Wages**

15 **[Cal. Lab. Code §§ 201-203, 210, 233, 246]**

16 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

18 120. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 121. Cal Lab. Code § 233 provides that an employer must permit an employee to
22 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
23 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
24 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
25 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
26 right to sick pay wages, which an employer must calculate and compensate based on one of
27 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
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1 same manner as the regular rate of pay for the workweek in which the employee uses paid
2 sick time, whether or not the employee actually works overtime in that workweek,” or (ii)
3 “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s
4 total wages, not including overtime premium pay, by the employee’s total hours worked in
5 the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and
6 233, employees may sue to recover underpaid sick pay wages as damages.

7 122. As a matter of policy and practice, DEFENDANT pays sick pay wages to
8 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the
9 incorrect rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-
10 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
11 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
12 wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS
13 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
14 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
15 employee’s total wages, not including overtime premium pay, by the employee’s total hours
16 worked in the full pay periods of the prior 90 days of employment. As a result,
17 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
18 CALIFORNIA LABOR-SUB-CLASS.

19 123. Code § 246 specifically requires that, upon use of accrued sick leave, vested
20 sick pay wages are due and to be paid no later than the payday for the next regular payroll
21 period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201
22 provides that if an employer discharges an employee, wages earned and unpaid at the time
23 of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an
24 employee is entitled to receive all unpaid wages no later than 72 hours after an employee
25 quits his or her employment, unless the employee has given 72-hour notice of his or her
26 intention to quit, in which case the employee is entitled to his or her wages at the time of
27 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
28

1 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab.
2 Code §§ 201-202, then the wages of the employee shall continue as a penalty from the due
3 date, and at the same rate until paid, but the wages shall not continue for more than thirty
4 (30) days. Likewise, Cal. Lab. Code § 210 provides penalties for untimely payments during
5 employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover
6 applicable penalties.

7 124. As alleged herein and as a matter of policy and practice, DEFENDANT
8 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
9 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
10 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 210, 233, and 246,
11 among other Labor Code provisions. PLAINTIFFS are informed and believe that
12 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
13 mandates of the Labor Code as it relates to PLAINTIFFS' allegations, especially since the
14 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
15 include those benefits to which an employee is entitled as a part of his or her compensation,
16 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
17 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
18 willfully fails to timely pay PLAINTIFFS and the other members of the CALIFORNIA
19 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
20 penalties.

21 125. Such a pattern, practice, and uniform administration of corporate policy is
22 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-
23 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
24 attorney's fees, and costs of suit.

25 ///

26 ///

27 ///

1 **TENTH CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFFS and Against All Defendants)**

5 126. PLAINTIFFS reallege and incorporate by reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

7 127. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
10 fundamentally a law enforcement action designed to protect the public and not to benefit private
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
16 subject to arbitration.

17 128. PLAINTIFFS, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, bring this Representative Action on behalf of the State of California with respect to
20 themselves and all individuals who are or previously were employed by Ed David Care Homes,
21 Inc. And/or Aim Higher, Incorporated in California, including any employees staffed with Ed
22 David Care Homes, Inc. And/or Aim Higher, Incorporated by a third party, and classified as
23 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of September
24 12, 2022 until a date as determined by the Court (the "PAGA PERIOD").

25 129. On September 12, 2023, PLAINTIFFS gave written notice by electronic mail to
26 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28

1 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this referenced
2 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
3 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
4 Section 2699.3, PLAINTIFFS may now commence a representative civil action under PAGA
5 pursuant to Section 2699 as the proxy of the State of California with respect to all
6 AGGRIEVED EMPLOYEES as herein defined.

7 130. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
9 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
10 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
11 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
12 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
13 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
14 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
15 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby
16 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of
17 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
18 representative of the State of California for the illegal conduct perpetrated on PLAINTIFFS and
19 the AGGRIEVED EMPLOYEES.

20 131. All of the conduct and violations alleged herein occurred during the PAGA
21 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
22 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
23 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
24 AJDAR 12157 (Certified for Publication 12/19/18).

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
7 B) An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
9 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
10 withheld from compensation due to PLAINTIFFS and the other members of the
11 CALIFORNIA CLASS; and,
12 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT's violations due to
14 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 16 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
17 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
19 B) Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum and overtime compensation due PLAINTIFFS and the
21 other members of the CALIFORNIA LABOR SUB-CLASS, during the
22 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
23 at the statutory rate;
24 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
25 in which a violation occurs and one hundred dollars (\$100) per each member of
26 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
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period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,

G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

4. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

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Dated: November 14, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiffs

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: November 14, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiffs

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EXHIBIT #1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

September 12, 2023

CA3014

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Aim Higher, Incorporated
Certified Mail #95890710527001823744439
ED DAVID
5746 LONETREE BLVD
ROCKLIN, CA 95765

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Ed David Care Homes, Inc. and/or Aim Higher, Incorporated in California, including any employees staffed with Ed David Care Homes, Inc. and/or Aim Higher, Incorporated by a third party, and classified as non-exempt employees during the time period of September 12, 2022 until a date as determined by the Court. Our offices represent Plaintiffs Leah Malapit, Infinity Price, and Laura Macias (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against Ed David Care Homes, Inc. and/or Aim Higher, Incorporated (“Defendant”). Plaintiff Malapit was employed from May 9, 2022 to June 7, 2023 by Defendant in California. Plaintiff Price was employed from October 2022 to April 2023 by Defendant in California. Plaintiff Macias has been employed since June 19, 2021 by Defendant in California. Plaintiffs were at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this

resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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Certified Mail #9589071052700182374422
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Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.