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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

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

Plaintiffs,

vs.

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

Defendants.

Case No. 23CV012773

**SECOND 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 Leah Malapit, Infinity Price, Laura Macias and Liwanag Linang
2 (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current
3 and former employees allege on information and belief, except for their own acts and
4 knowledge which are based on personal 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. Plaintiff Linang was
3 employed by DEFENDANT in California from August 15, 2022 until February of 2023 and at
4 all times was classified by DEFENDANT as a non-exempt employee, paid on an hourly basis,
5 and entitled to the legally required meal and rest periods and payment of minimum and overtime
6 wages due for all time worked.

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

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

26 10. The true names and capacities, whether individual, corporate, subsidiary,
27 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
28 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious

1 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
2 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
3 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
4 information and belief allege, that the Defendants named in this Complaint, including DOES
5 1 through 50, inclusive, are responsible in some manner for one or more of the events and
6 happenings that proximately caused the injuries and damages hereinafter alleged.

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

15 16 **THE CONDUCT**

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

1 DEFENDANT, so that during the course of their employment, PLAINTIFFS and
2 CALIFORNIA CLASS Members are paid less than they would have been paid had they
3 been paid for actual recorded time rather than “rounded” time. Additionally,
4 DEFENDANT engages in the practice of requiring PLAINTIFFS and CALIFORNIA
5 CLASS Members to perform work off the clock in that DEFENDANT, as a condition of
6 employment, required these employees to submit to mandatory temperature checks and
7 symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT’s
8 timekeeping system for the workday. As a result, PLAINTIFFS and other CALIFORNIA
9 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal
10 breaks by working without their time being correctly recorded and without compensation at
11 the applicable rates. DEFENDANT’s policy and practice not to pay PLAINTIFFS and other
12 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT’s
13 business records.

14 13. State and federal law provides that employees must be paid overtime and meal
15 and rest break premiums at one-and-one-half times their “regular rate of pay.”
16 PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly rate
17 plus incentive pay that is tied to specific elements of an employee’s performance.

18 14. The second component of PLAINTIFFS’ and other CALIFORNIA CLASS
19 Members’ compensation is DEFENDANT’s non-discretionary incentive program that paid
20 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
21 performance for DEFENDANT. The non-discretionary incentive program provided all
22 employees paid on an hourly basis with incentive compensation when the employees met the
23 various performance goals set by DEFENDANT. However, when calculating the regular
24 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and
25 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
26 compensation as part of the employees’ “regular rate of pay” for purposes of calculating
27 overtime pay and meal and rest break premium pay. Management and supervisors described
28 the incentive program to potential and new employees as part of the compensation package.

1 As a matter of law, the incentive compensation received by PLAINTIFFS and other
2 CALIFORNIA CLASS Members must be included in the “regular rate of pay.” The failure
3 to do so has resulted in a underpayment of overtime compensation and meal and rest break
4 premiums to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANT.

5 15. As a result of their rigorous work schedules, PLAINTIFFS and other
6 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
7 off duty meal breaks and were not fully relieved of duty for their meal periods.
8 PLAINTIFFS and other CALIFORNIA CLASS Members were required from time to time
9 to perform work as ordered by DEFENDANT for more than five (5) hours during some
10 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
11 provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal
12 period for some workdays in which these employees were required by DEFENDANT to
13 work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the
14 meal period times to avoid paying penalties to PLAINTIFFS and other CALIFORNIA
15 CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS
16 therefore forfeit meal breaks without additional compensation and in accordance with
17 DEFENDANT’s corporate policy and practice.

18 16. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
19 CALIFORNIA CLASS Members were also required from time to time to work in excess of
20 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
21 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
22 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
23 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
24 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
25 worked of ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA
26 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
27 the applicable California Wage Order requires employers to provide employees with off-
28 duty rest periods, which the California Supreme Court defined as time during which an

1 employee is relieved from all work related duties and free from employer control. In so
2 doing, the Court held that the requirement under California law that employers authorize and
3 permit all employees to take rest period means that employers must relieve employees of all
4 duties and relinquish control over how employees spend their time which includes control
5 over the locations where employees may take their rest period. Employers cannot impose
6 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
7 back. Here, DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA
8 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
9 which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the
10 work premises during their rest period.

11 17. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
12 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
13 actual amount of time these employees worked. Pursuant to the Industrial Welfare
14 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
15 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
16 employee was subject to the control of an employer, including all the time the employee was
17 permitted or suffered to permit this work. DEFENDANT required these employees to work
18 off the clock without paying them for all the time they were under DEFENDANT's control.
19 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
20 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
21 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
22 working without their time being accurately recorded and without compensation at the
23 applicable minimum wage and overtime wage rates. To the extent that the time worked off
24 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
25 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
26 1197, and 1197.1.

27 18. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
28 other members of the CALIFORNIA CLASS with complete and accurate wage statements

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

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

23 in [I]n addition to, and entirely independent and apart from, any other penalty provided
24 this article, every person who fails to pay the wages of each employee as provided in
25 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
26 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.

27 20. DEFENDANT from time to time failed to pay PLAINTIFFS and members of
28 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the

1 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
2 the “Hourly” regular wage payments.

3 21. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
4 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
5 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
6 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
7 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA
8 CLASS Members at their base rates of pay.

9 22. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
10 employees be calculated by dividing the employee’s total wages, not including overtime
11 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
12 days of employment.

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

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

26 25. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer
28 to said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFFS and

1 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
2 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
3 Members, failed to disclose all aspects of the deductions from compensation payable to
4 PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to
5 pay these employees all wages due at each applicable pay period and upon termination.
6 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of
7 all illegal deductions from wages according to proof, related penalties, interest, attorney fees
8 and costs.

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

19 27. In the course of their employment PLAINTIFFS and other CALIFORNIA
20 CLASS Members as a business expense, were required by DEFENDANT to use their own
21 personal cellular phones as a result of and in furtherance of their job duties as employees for
22 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
23 associated with the use of their personal cellular phones for DEFENDANT's benefit.
24 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
25 DEFENDANT to use their personal cellular phones. As a result, in the course of their
26 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
27 CLASS incurred unreimbursed business expenses which included, but were not limited to,
28

1 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
2 DEFENDANT.

3 28. In violation of the applicable sections of the California Labor Code and the
4 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
5 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
6 knowingly and systematically failed to provide PLAINTIFFS and the other Aggrieved
7 Employees suitable seating when the nature of these employees' work reasonably permitted
8 sitting.

9 29. DEFENDANT knew or should have known that PLAINTIFFS and other
10 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
11 not interfere with the performance of their duties, and that DEFENDANT did not provide
12 suitable seating and/or did not allow them to sit when it did not interfere with the
13 performance of their duties.

14 30. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved
15 Employees, DEFENDANT violated California Labor Code Section 1198 and California
16 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
17 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties on
18 behalf of PLAINTIFFS and other Aggrieved Employees as provided herein. Providing
19 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
20 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
21 Code and regulations promulgated thereunder as herein alleged.

22 31. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the
23 legally required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable
24 Wage Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime
25 wages due to PLAINTIFFS. DEFENDANT did not have a policy or practice which provided
26 timely off-duty meal and rest breaks to PLAINTIFFS and also failed to compensate
27 PLAINTIFFS for PLAINTIFFS' missed meal and rest breaks. The nature of the work
28 performed by the PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of

1 PLAINTIFFS' duties for the legally required off-duty meal periods. As a result,
2 DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is
3 evidenced by DEFENDANT's business records. The amount in controversy for
4 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

5 **JURISDICTION AND VENUE**

6
7 32. This Court has jurisdiction over this Action pursuant to California Code of
8 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
9 17203. This action is brought as a Class Action on behalf of PLAINTIFFS and similarly
10 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

11 33. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT
13 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and
14 facilities in this County and/or conducts substantial business in this County, and (ii)
15 committed the wrongful conduct herein alleged in this County against members of the
16 CALIFORNIA CLASS.

17 **THE CALIFORNIA CLASS**

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19 34. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and
20 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
21 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
22 California class, defined as all individuals who are or previously were employed by Ed
23 David Care Homes, Inc. and/or Aim Higher, Incorporated in California, including any
24 employees staffed with Ed David Care Homes, Inc. and/or Aim Higher, Incorporated by a
25 third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any
26 time during the period beginning on December 5, 2019 and ending on the date as determined
27 by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
28

1 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
2 (\$5,000,000.00).

3 35. To the extent equitable tolling operates to toll claims by the CALIFORNIA
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
5 accordingly.

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

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

22 38. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
23 CLASS Members is impracticable.

24 39. DEFENDANT violated the rights of the CALIFORNIA CLASS under
25 California law by:

- 26 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
27 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
28 and/or deceptively having in place company policies, practices and

1 procedures that failed to record and pay PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS for all time worked, including
3 minimum wages owed and overtime wages owed for work performed
4 by these employees; and,

- 5 (b) Committing an act of unfair competition in violation of the UCL, by
6 failing to provide the PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS with the legally required meal and rest periods.

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

- 10 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
11 that the joinder of all such persons is impracticable and the disposition
12 of their claims as a class will benefit the parties and the Court;
- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
14 issues that are raised in this Complaint are common to the
15 CALIFORNIA CLASS will apply to every member of the
16 CALIFORNIA CLASS;
- 17 (c) The claims of the representative PLAINTIFFS are typical of the claims
18 of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all
19 the other members of the CALIFORNIA CLASS, were classified as
20 non-exempt employees paid on an hourly basis who were subjected to
21 the DEFENDANT's deceptive practice and policy which failed to
22 provide the legally required meal and rest periods to the CALIFORNIA
23 CLASS and thereby underpaid compensation to PLAINTIFFS and
24 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
25 result of DEFENDANT's employment practices. PLAINTIFFS and the
26 members of the CALIFORNIA CLASS were and are similarly or
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1 identically harmed by the same unlawful, deceptive and unfair
2 misconduct engaged in by DEFENDANT; and,

- 3 (d) The representative PLAINTIFFS will fairly and adequately represent
4 and protect the interest of the CALIFORNIA CLASS, and have
5 retained counsel who are competent and experienced in Class Action
6 litigation. There are no material conflicts between the claims of the
7 representative PLAINTIFFS and the members of the CALIFORNIA
8 CLASS that would make class certification inappropriate. Counsel for
9 the CALIFORNIA CLASS will vigorously assert the claims of all
10 CALIFORNIA CLASS Members.

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

- 13 (a) Without class certification and determination of declaratory, injunctive,
14 statutory and other legal questions within the class format, prosecution
15 of separate actions by individual members of the CALIFORNIA
16 CLASS will create the risk of:

- 17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA CLASS; and/or,
21 2) Adjudication with respect to individual members of the
22 CALIFORNIA CLASS which would as a practical matter be
23 dispositive of interests of the other members not party to the
24 adjudication or substantially impair or impede their ability to
25 protect their interests.

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

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

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

18 1) The interests of the members of the CALIFORNIA CLASS in
19 individually controlling the prosecution or defense of separate
20 actions in that the substantial expense of individual actions will
21 be avoided to recover the relatively small amount of economic
22 losses sustained by the individual CALIFORNIA CLASS
23 Members when compared to the substantial expense and burden
24 of individual prosecution of this litigation;

25 2) Class certification will obviate the need for unduly duplicative
26 litigation that would create the risk of:
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1 A. Inconsistent or varying adjudications with respect to
2 individual members of the CALIFORNIA CLASS, which
3 would establish incompatible standards of conduct for the
4 DEFENDANT; and/or,

5 B. Adjudications with respect to individual members of the
6 CALIFORNIA CLASS would as a practical matter be
7 dispositive of the interests of the other members not
8 parties to the adjudication or substantially impair or
9 impede their ability to protect their interests;

10 3) In the context of wage litigation because a substantial number of
11 individual CALIFORNIA CLASS Members will avoid asserting
12 their legal rights out of fear of retaliation by DEFENDANT,
13 which may adversely affect an individual's job with
14 DEFENDANT or with a subsequent employer, the Class Action
15 is the only means to assert their claims through a representative;
16 and,

17 4) A class action is superior to other available methods for the fair
18 and efficient adjudication of this litigation because class
19 treatment will obviate the need for unduly and unnecessary
20 duplicative litigation that is likely to result in the absence of
21 certification of this action pursuant to Cal. Code of Civ. Proc. §
22 382.

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

25 (a) The questions of law and fact common to the CALIFORNIA CLASS
26 predominate over any question affecting only individual CALIFORNIA
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1 CLASS Members because the DEFENDANT's employment practices
2 are applied with respect to the CALIFORNIA CLASS;

3 (b) A Class Action is superior to any other available method for the fair
4 and efficient adjudication of the claims of the members of the
5 CALIFORNIA CLASS because in the context of employment litigation
6 a substantial number of individual CALIFORNIA CLASS Members
7 will avoid asserting their rights individually out of fear of retaliation or
8 adverse impact on their employment;

9 (c) The members of the CALIFORNIA CLASS are so numerous that it is
10 impractical to bring all members of the CALIFORNIA CLASS before
11 the Court;

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

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

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

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

- 1 (h) The members of the CALIFORNIA CLASS are readily ascertainable
2 from the business records of DEFENDANT; and,
- 3 (i) Class treatment provides manageable judicial treatment calculated to
4 bring a efficient and rapid conclusion to all litigation of all wage and
5 hour related claims arising out of the conduct of DEFENDANT as to
6 the members of the CALIFORNIA CLASS.

7 43. DEFENDANT maintains records from which the Court can ascertain and
8 identify by job title each of DEFENDANT's employees who have been intentionally
9 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
10 PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of
11 similarly situated employees when they have been identified.

12
13 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

- 18 (a) Whether DEFENDANT unlawfully failed to correctly calculate and
19 pay compensation due to members of the CALIFORNIA LABOR
20 SUB-CLASS for missed meal and rest breaks in violation of the
21 California Labor Code and California regulations and the applicable
22 California Wage Order;
- 23 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the
24 other members of the CALIFORNIA LABOR SUB-CLASS with
25 accurate itemized wage statements;
- 26 (c) Whether DEFENDANT has engaged in unfair competition by the
27 above-listed conduct;

1 (d) The proper measure of damages and penalties owed to the members of
2 the CALIFORNIA LABOR SUB-CLASS; and,

3 (e) Whether DEFENDANT's conduct was willful.

4 49. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
5 CLASS under California law by:

6 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
7 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
8 CLASS all wages due for overtime worked, for which DEFENDANT is
9 liable pursuant to Cal. Lab. Code § 1194;

10 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
11 accurately pay PLAINTIFFS and the members of the CALIFORNIA
12 LABOR SUB-CLASS the correct minimum wage pay for which
13 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

14 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
15 the members of the CALIFORNIA LABOR SUB-CLASS with an
16 accurate itemized statement in writing showing the corresponding
17 correct amount of wages earned by the employee;

18 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
19 PLAINTIFFS and the other members of the CALIFORNIA LABOR
20 SUB-CLASS with all legally required off-duty, uninterrupted thirty
21 (30) minute meal breaks and the legally required off-duty rest breaks;

22 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
23 when an employee is discharged or quits from employment, the
24 employer must pay the employee all wages due without abatement, by
25 failing to tender full payment and/or restitution of wages owed or in the
26 manner required by California law to the members of the
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1 CALIFORNIA LABOR SUB-CLASS who have terminated their
2 employment; and,

- 3 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS
4 and the CALIFORNIA LABOR SUB-CLASS members with necessary
5 expenses incurred in the discharge of their job duties.

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

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

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

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

- 16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA LABOR SUB-CLASS which
18 would establish incompatible standards of conduct for the
19 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
20 2) Adjudication with respect to individual members of the
21 CALIFORNIA LABOR SUB-CLASS which would as a
22 practical matter be dispositive of interests of the other members
23 not party to the adjudication or substantially impair or impede
24 their ability to protect their interests.

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

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

- 12 1) The interests of the members of the CALIFORNIA LABOR
13 SUB-CLASS in individually controlling the prosecution or
14 defense of separate actions in that the substantial expense of
15 individual actions will be avoided to recover the relatively small
16 amount of economic losses sustained by the individual
17 CALIFORNIA LABOR SUB-CLASS Members when compared
18 to the substantial expense and burden of individual prosecution
19 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 LABOR SUB-
24 CLASS, which would establish incompatible standards of
25 conduct for the DEFENDANT; and/or,
 - 26 B. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a
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practical matter be 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 LABOR SUB-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.

52. 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 LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (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 LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting

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

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

6 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
7 Members, will not be able to obtain effective and economic legal
8 redress unless the action 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 the
12 damages and injuries which DEFENDANT's actions have inflicted
13 upon the CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS for the injuries sustained;

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

21 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
22 ascertainable from the business records of DEFENDANT. The
23 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
24 CLASS Members who worked for DEFENDANT in California at any
25 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

26 (i) Class treatment provides manageable judicial treatment calculated to
27 bring a efficient and rapid conclusion to all litigation of all wage and
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1 hour related claims arising out of the conduct of DEFENDANT as to
2 the members of the CALIFORNIA LABOR SUB-CLASS.

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6 **FIRST CAUSE OF ACTION**

7 **For Unlawful Business Practices**

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

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

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

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

15 55. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
16 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
17 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
18 competition as follows:

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

27 Cal. Bus. & Prof. Code § 17203.

28 56. By the conduct alleged herein, DEFENDANT has engaged and continues to
engage in a business practice which violates California law, including but not limited to, the
applicable Industrial Wage Order(s), the California Code of Regulations and the California
Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,

1 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
2 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
3 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
4 held to constitute unfair competition, including restitution of wages wrongfully withheld.

5 57. By the conduct alleged herein, DEFENDANT's practices were unlawful and
6 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
7 unscrupulous or substantially injurious to employees, and were without valid justification or
8 utility for which this Court should issue equitable and injunctive relief pursuant to Section
9 17203 of the California Business & Professions Code, including restitution of wages
10 wrongfully withheld.

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

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

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

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

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

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

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

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

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

15
16 **SECOND CAUSE OF ACTION**

17 **For Failure To Pay Minimum Wages**

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

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

20 **and Against All Defendants)**

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

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

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

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

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

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

16 74. 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 denies accurate compensation to PLAINTIFFS and
19 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
20 wage pay.

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

1 76. As a direct result of DEFENDANT's unlawful wage practices as alleged
2 herein, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
3 did not receive the correct minimum wage compensation for their time worked for
4 DEFENDANT.

5 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
6 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
7 Members to work without paying them for all the time they were under DEFENDANT's
8 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
9 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
10 that they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

17
18 **THIRD CAUSE OF ACTION**

19 **For Failure To Pay Overtime Compensation**

20 **[Cal. Lab. Code § 510]**

21 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
22 **Defendants)**

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

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

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

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

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

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

20 88. DEFENDANT's unlawful wage and hour practices manifested, without
21 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
22 implementing a policy and practice that failed to accurately record overtime worked by
23 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied
24 accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA
25 LABOR SUB-CLASS for overtime worked, including, the overtime work performed in
26 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty
27 (40) hours in any workweek.
28

1 89. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
3 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
4 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
5 violation of the California Labor Code, the Industrial Welfare Commission requirements and
6 other applicable laws and regulations. As a direct result of DEFENDANT's unlawful wage
7 practices as alleged herein, the PLAINTIFFS and the other members of the CALIFORNIA
8 LABOR SUB-CLASS did not receive full compensation for overtime worked.

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

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

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

1 93. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
2 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of
4 the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
5 economic injury in amounts which are presently unknown to them and which will be
6 ascertained according to proof at trial.

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

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

22 96. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
23 CLASS therefore request recovery of all overtime wages, according to proof, interest,
24 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
25 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
26 extent minimum and/or overtime compensation is determined to be owed to the
27 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
28

1 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
2 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
3 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
5 good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
6 Members are entitled to seek and recover statutory costs.

7
8 **FOURTH CAUSE OF ACTION**

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

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

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
12 **Defendants)**

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

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

1 second off-duty meal period in some workdays in which these employees were required by
2 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFFS
3 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
4 breaks without additional compensation and in accordance with DEFENDANT's strict
5 corporate policy and practice.

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

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

15
16 **FIFTH CAUSE OF ACTION**

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

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

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

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

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

1 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
2 (10) minutes for some shifts worked of ten (10) hours or more from time to time.
3 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not
4 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
5 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically
6 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

16 **SIXTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 226]**

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

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

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

27 (1) gross wages earned,
28

(2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
(3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
(5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid,
(7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

107. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members 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 other CALIFORNIA LABOR SUB-CLASS Members failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period. When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time

1 to time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
2 CLASS with wage statements which violated Cal. Lab. Code § 226.

3 108. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
4 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
5 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
6 expended calculating the correct wages for all missed meal and rest breaks and the amount
7 of employment taxes which were not properly paid to state and federal tax authorities.
8 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
9 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
10 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
11 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
12 226, in an amount according to proof at the time of trial (but in no event more than four
13 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
14 CALIFORNIA LABOR SUB-CLASS herein).

15
16 **SEVENTH CAUSE OF ACTION**

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

18 **[Cal. Lab. Code § 2802]**

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

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

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

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

111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones and home offices in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones and home offices for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

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

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

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

5 As used in this article:

6 (a) "Wages" includes all amounts for labor performed by employees of
every description, whether the amount is fixed or ascertained by the
standard of time, task, piece, Commission basis, or other method of calculation.

7 (b) "Labor" includes labor, work, or service whether rendered or
8 performed under contract, subcontract, partnership, station plan, or other
agreement if the labor to be paid for is performed personally by the person
demanding payment.

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

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

13 If an employee not having a written contract for a definite period quits his
14 or her employment, his or her wages shall become due and payable not
later than 72 hours thereafter, unless the employee has given 72 hours
15 previous notice of his or her intention to quit, in which case the employee
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-
hour notice shall be entitled to receive payment by mail if he or she so
17 requests and designates a mailing address. The date of the mailing shall
constitute the date of payment for purposes of the requirement to provide
18 payment within 72 hours of the notice of quitting.

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

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

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

25 118. The employment of Plaintiff Malapit, Plaintiff Price, and many CALIFORNIA
26 LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered
27 payment of all wages owed as required by law. Additionally, at all times during the term of
28

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

1 waiting time penalty calculations. This failure by DEFENDANT is believed to be the result
2 of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for
3 earned, accrued and vested vacation and holiday time, as well as the corresponding waiting
4 time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive
5 practice to the detriment of Plaintiff Malapit, Plaintiff Price, and the members of the
6 CALIFORNIA LABOR SUB-CLASS. DEFENDANT's uniform practice and policy of
7 failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday time
8 accumulated at employment termination violated and continues to violate Section 227.3 of
9 the California Labor Code.

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

17
18 **NINTH CAUSE OF ACTION**

19 **For Failure to Pay Sick Pay Wages**

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

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

22 **and Against All Defendants)**

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

26 121. Cal Lab. Code § 233 provides that an employer must permit an employee to
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28

1 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
2 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
3 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
4 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
5 right to sick pay wages, which an employer must calculate and compensate based on one of
6 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
7 same manner as the regular rate of pay for the workweek in which the employee uses paid
8 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
9 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
10 total wages, not including overtime premium pay, by the employee's total hours worked in
11 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
12 233, employees may sue to recover underpaid sick pay wages as damages.

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

25 123. Code § 246 specifically requires that, upon use of accrued sick leave, vested
26 sick pay wages are due and to be paid no later than the payday for the next regular payroll
27 period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201
28

1 provides that if an employer discharges an employee, wages earned and unpaid at the time
2 of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an
3 employee is entitled to receive all unpaid wages no later than 72 hours after an employee
4 quits his or her employment, unless the employee has given 72-hour notice of his or her
5 intention to quit, in which case the employee is entitled to his or her wages at the time of
6 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
7 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab.
8 Code §§ 201-202, then the wages of the employee shall continue as a penalty from the due
9 date, and at the same rate until paid, but the wages shall not continue for more than thirty
10 (30) days. Likewise, Cal. Lab. Code § 210 provides penalties for untimely payments during
11 employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover
12 applicable penalties.

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

27 125. Such a pattern, practice, and uniform administration of corporate policy is
28

1 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-
2 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
3 attorney's fees, and costs of suit.

4
5 **TENTH CAUSE OF ACTION**

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

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

8 **(By Plaintiffs Malapit, Price and Macias and Against All Defendants)**

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

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

21 128. Plaintiffs Malapit, Price and Macias, and such persons that may be added from
22 time to time who satisfy the requirements and exhaust the administrative procedures under the
23 Private Attorney General Act, bring this Representative Action on behalf of the State of
24 California with respect to themselves and all individuals who are or previously were employed
25 by Ed David Care Homes, Inc. And/or Aim Higher, Incorporated in California, including any
26 employees staffed with Ed David Care Homes, Inc. And/or Aim Higher, Incorporated by a third
27 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
28

1 time period of September 12, 2022 until a date as determined by the Court (the "PAGA
2 PERIOD").

3 129. On September 12, 2023, Plaintiffs Malapit, Price and Macias gave written notice
4 by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
5 certified mail to the employer of the specific provisions of this code alleged to have been
6 violated as required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated
7 by this referenced herein (*PAGA Notice only without draft complaint*). The statutory waiting
8 period for Plaintiffs Malapit, Price and Macias to add these allegations to the Complaint has
9 expired. As a result, pursuant to Section 2699.3, Plaintiffs Malapit, Price and Macias may now
10 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
11 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

12 130. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide Plaintiffs Malapit, Price
14 and Macias and the AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed
15 to properly record and provide legally required meal and rest periods, (c) failed to pay minimum
16 wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees
17 for required expenses, and (f) failed to provide wages when due, all in violation of the
18 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
19 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code
20 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s),
21 and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek
22 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of
23 2004 as the representative of the State of California for the illegal conduct perpetrated on
24 Plaintiffs Malapit, Price and Macias and the AGGRIEVED EMPLOYEES.

25 131. All of the conduct and violations alleged herein occurred during the PAGA
26

27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
2 Plaintiffs Malapit, Price and Macias during the PAGA PERIOD, Plaintiffs Malapit, Price and
3 Macias seek penalties for those violations that affected the AGGRIEVED EMPLOYEES
4 pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication
5 12/19/18).

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

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

- 22 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
23 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
24 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
25 B) Compensatory damages, according to proof at trial, including compensatory
26 damages for minimum and overtime compensation due PLAINTIFFS and the
27 other members of the CALIFORNIA LABOR SUB-CLASS, during the
28

applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay 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,

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

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6 ///

7 Dated: March 14, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

9 By: /s/ Nicholas J. De Blouw

10 Norman B. Blumenthal
11 Nicholas J. De Blouw

12 *Attorneys for Plaintiffs*
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DEMAND FOR A JURY TRIAL

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

Dated: March 14, 2025

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

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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

Ed David Care Homes, Inc.
Certified Mail #9589071052700182374422
MARINA 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 Statue 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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WRITERS EXT:
1004

September 12, 2023
CA3014

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

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Online Filing 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.

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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.