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ELECTRONICALLY FILED
Superior Court of California
County of Alameda
04/29/2024

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CHRISTINA NANCE, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

YOUNG MEN’S CHRISTIAN
ASSOCIATION OF THE EAST BAY DBA
YMCA OF THE EAST BAY, a California
nonprofit corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 23CV040009

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff CHRISTINA NANCE and DEREKA WILLIAMS (“Plaintiffs,” “Plaintiff Nance,” and “Plaintiff Williams”), individually, and on behalf of other members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Alameda. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California, County of Alameda. Defendants employed Plaintiffs within the State of California, County of Alameda.

PARTIES

5. Plaintiff Nance is an individual residing in the State of California, County of Alameda. Plaintiff Williams is an individual residing in the State of California, County of Alameda.

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1 6. Defendant YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE EAST
2 BAY, DBA YMCA OF THE EAST BAY (“Defendant” or “YMCA OF THE EAST BAY”), at
3 all times herein mentioned, was and is, upon information and belief, a California nonprofit
4 corporation headquartered in the State of California, and at all times herein mentioned, was
5 and is, an employer whose employees are engaged throughout the State of California,
6 including the County of Alameda.

7 7. At all relevant times, Defendant YMCA OF THE EAST BAY was the
8 “employer” of Plaintiffs within the meaning of all applicable laws and statutes.

9 8. At all times herein relevant, Defendant YMCA OF THE EAST BAY and DOES
10 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
11 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
12 of the other, and at all times relevant hereto were acting within the course and scope of their
13 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
14 employees, successors-in-interest, co-conspirators and assigns, and all acts or omissions
15 alleged herein were duly committed with the ratification, knowledge, permission,
16 encouragement, authorization, and consent of each defendant designated herein.

17 9. The true names and capacities, whether corporate, associate, individual or
18 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
19 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on
20 that information and belief allege, that each of the Defendants designated as a DOE is legally
21 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
22 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
23 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
24 capacities when the same have been ascertained.

25 10. Defendant YMCA OF THE EAST BAY and DOES 1 through 100 will
26 hereinafter collectively be referred to as “Defendants.”

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11. Plaintiffs allege that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendants and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this action individually and on behalf of all other members of the general public similarly situated and seek class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former non-exempt California employees of Defendants who were employed by Defendants at any time between August 4, 2019, and June 5, 2024.

14. Plaintiffs reserve the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time. However, the class is estimated to be greater than 3,000 individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiffs' claims are typical of all other class members' claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom Plaintiffs have a well-defined community of interest.

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1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom Plaintiffs have a well-defined community
3 of interest and typicality of claims, as demonstrated herein. Plaintiffs
4 have no interest that is antagonistic to the other class members. Plaintiffs'
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiffs have
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the Labor Code, was willful;

26 b. Whether Defendants failed to pay their hourly-paid or non-exempt
27 employees within the State of California for all hours worked;
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- 1 c. Whether Defendants required Plaintiffs and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and failed to pay the legally required overtime compensation to Plaintiffs
4 and the other class members;
- 5 d. Whether Defendants properly calculated the regular rate for Plaintiffs
6 and the other class members who worked overtime and earned incentive
7 pay and sick leave pay;
- 8 e. Whether Defendants failed to provide Plaintiffs and the other class
9 members legally mandated meal and/or rest periods and failed to
10 compensate them the related premium wages pursuant to Labor Code
11 section 226.7(c);
- 12 f. Whether Defendants failed to pay minimum wages to Plaintiffs and the
13 other class members for all hours worked;
- 14 g. Whether Defendants failed to pay all wages due to Plaintiffs and the other
15 class members timely in violation of Labor Code section 204, and within
16 the required time upon their discharge or resignation;
- 17 h. Whether Defendants complied with wage reporting as required by the
18 Labor Code, including, *inter alia*, section 226;
- 19 i. Whether Defendants failed to reimburse Plaintiffs and the other class
20 members for necessary business-related expenses and costs;
- 21 j. Whether Defendants' conduct was willful or reckless;
- 22 k. Whether Defendants engaged in unfair business practices in violation of
23 Business & Professions Code sections 17200, *et seq.*;
- 24 l. The appropriate amount of damages, restitution, and/or monetary
25 penalties resulting from Defendants' violation of the law; and
- 26 m. Whether Plaintiffs and the other class members are entitled to
27 compensatory damages pursuant to the Labor Code.
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GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiffs as hourly-paid non-exempt employees during the relevant time period in the State of California, County of Alameda.

19. Defendants had the authority to hire and terminate Plaintiffs and the other class members; to set work rules and conditions governing Plaintiffs' and other class members' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs' and other class members' employment for them to be joint employers of Plaintiffs and the other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiffs and the other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiffs and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

24. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, *inter alia*, failing to pay them for all hours worked and sick leave, and failing to provide legally mandated meal and rest breaks or pay related premium wages in lieu thereof, in violation of the law.

25. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive certain wages for overtime compensation and that Plaintiffs and the other class members were not receiving wages for overtime compensation. During the relevant time period, Plaintiffs

1 and the other class members routinely worked in excess of eight (8) hours in a day and 40
2 hours in a week. Defendants expected Plaintiffs and the other class members to continue
3 working off-the-clock despite having already completed their shifts. These instances of off-
4 the-clock work included grading homework, preparing for upcoming classes, purchasing
5 materials from stores, filling in daily status reports, and speaking to students' parents.
6 Defendants only paid Plaintiffs and the other class members according to their shift schedules,
7 not for all hours worked.

8 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 engaged in rounding practices and flat rate payments, which prevented Plaintiffs and the other
10 class members from being fully compensated for all actual work time.

11 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 failed to provide Plaintiffs and the other class members the required meal and rest periods
13 during the relevant time period as required under the Industrial Welfare Commission ("IWC")
14 Wage Orders and thus they are entitled to any and all applicable penalties.

15 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 knew or should have known that Plaintiffs and the other class members were entitled to receive
17 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs'
18 and the other class members' regular rate of pay when a meal period was short, missed, late
19 or interrupted, and that Plaintiffs and the other class members did not receive all timely and
20 proper meal periods or payment of one additional hour of pay at their regular rate of pay when
21 a meal period was missed.

22 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
23 knew or should have known that Plaintiffs and other class members were entitled to receive
24 all timely rest periods without interruption or payment of one additional hour of pay at
25 Plaintiffs' and the other class members' regular rate of pay when a rest period was short,
26 missed, late or interrupted, and that Plaintiffs and the other class members did not receive all
27 rest periods or payment of one additional hour of pay at their regular rate of pay when a rest
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1 period was missed.

2 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
3 knew or should have known that Plaintiffs and the other class members were entitled to receive
4 at least minimum wages for compensation and that Plaintiffs and the other class members were
5 not receiving at least minimum wages for all hours worked.

6 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
7 knew or should have known that Plaintiffs and the other class members were entitled to receive
8 timely payments for all wages earned, including the wages owed to them upon discharge or
9 resignation, including overtime and minimum wages and meal and rest period premiums, and
10 that Plaintiffs and the other class members did not, in fact, receive such wages owed to them
11 at the time of their discharge or resignation.

12 32. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiffs and the other class members were entitled to receive
14 complete and accurate wage statements in accordance with the law, but, in fact, Plaintiffs and
15 the other class members did not receive complete and accurate wage statements from
16 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of
17 hours worked by Plaintiffs and the other class members.

18 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 knew or should have known that Plaintiffs and the other class members were entitled to
20 reimbursement for necessary business-related expenses.

21 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
22 knew or should have known that they had a duty to compensate Plaintiffs and the other class
23 members pursuant to the law, and that Defendants had the financial ability to pay such
24 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
25 represented to Plaintiffs and the other class members that they were properly denied wages,
26 all in order to increase Defendants' profits.

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1 35. During the relevant time period set forth herein, Defendants failed to pay
2 overtime wages to Plaintiffs and the other class members for all hours worked. Plaintiffs and
3 other class members were required to work more than eight (8) hours per day and/or more
4 than forty (40) hours per week without overtime compensation.

5 36. During the relevant time period set forth herein, Defendants paid Plaintiffs
6 bonuses that were non-discretionary in nature (*e.g.*, early shift premium, night premium). Yet,
7 Defendants did not factor these bonuses into Plaintiffs' and the other class members' regular
8 rate of pay for purposes of overtime compensation, thereby underpaying them wages owed.

9 37. During the relevant time period set forth herein, Defendants failed to properly
10 calculate and pay sick leave to Plaintiffs and the other class members. Defendants also failed
11 to pay Plaintiffs and the other class members paid sick leave at non-exempt employee's regular
12 rate of pay or at a rate calculated by dividing the employee's total wages, not including
13 overtime premium pay, by the employee's total hours worked in the full pay periods of the
14 prior 90 days of employment. Instead, Defendants paid sick leave at rates lower than Plaintiffs'
15 and the other class members' base hourly rate of pay.

16 38. During the relevant time period set forth herein, Defendants failed to provide the
17 requisite uninterrupted and timely meal and rest periods to Plaintiffs and the other class
18 members.

19 39. During the relevant time period set forth herein, Defendants failed to pay
20 Plaintiffs and the other class members at least minimum wages for all hours worked.

21 40. During the relevant time period set forth herein, Defendants failed to pay
22 Plaintiffs and the other class members the wages owed to them upon discharge or resignation.

23 41. During the relevant time period set forth herein, Defendants failed to provide
24 complete or accurate wage statements to Plaintiffs and the other class members.

25 42. During the relevant time period set forth herein, Defendants failed to reimburse
26 Plaintiffs and the other class members for necessary business-related expenses.

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43. During the relevant time period set forth herein, Defendants failed to properly compensate Plaintiffs and the other class members pursuant to the law in order to increase Defendants' profits.

44. Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

**(Against YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA
YMCA OF THE EAST BAY and DOES 1 through 100)**

45. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 44, and each and every part thereof with the same force and effect as though fully set forth herein.

46. Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

47. The applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and the other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

48. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

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1 49. Labor Code section 510 codifies the right to overtime compensation at one-and-
2 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day
3 or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work,
4 and overtime compensation at twice the regular hourly rate for hours worked in excess of
5 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

6 50. During the relevant time period set forth herein, Plaintiffs and the other class
7 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in
8 a week.

9 51. During the relevant time period set forth herein, Defendants intentionally and
10 willfully failed to pay overtime wages owed to Plaintiffs and the other class members.

11 52. Defendants' failure to pay Plaintiffs and the other class members the unpaid
12 balance of overtime compensation, as required by the laws, violates the provisions of Labor
13 Code sections 510 and 1198, and is therefore unlawful.

14 53. Pursuant to Labor Code section 1194, Plaintiffs and the other class members are
15 entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys'
16 fees.

17 **SECOND CAUSE OF ACTION**

18 **(Violation of California Labor Code §§ 226.7 and 512(a))**

19 **(Against YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA**

20 **YMCA OF THE EAST BAY and DOES 1 through 100)**

21 54. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
22 through 53, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 55. During the relevant time period set forth herein, the IWC Wage Order and Labor
25 Code sections 226.7 and 512(a) were applicable to Plaintiffs' and the other class members'
26 employment by Defendants.

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1 56. During the relevant time period set forth herein, Labor Code section 226.7
2 provides that no employer shall require an employee to work during any meal or rest period
3 mandated by the applicable IWC Wage Order.

4 57. During the relevant time period set forth herein, the applicable IWC Wage Order
5 and Labor Code section 512(a) provide that an employer may not require, cause or permit an
6 employee to work for a work period of more than five (5) hours per day without providing the
7 employee with a meal period of not less than thirty (30) minutes, except that if the total work
8 period per day of the employee is no more than six (6) hours, the meal period may be waived
9 by mutual consent of both the employer and employee.

10 58. During the relevant time period set forth herein, the applicable IWC Wage Order
11 and Labor Code section 512(a) further provide that an employer may not require, cause, or
12 permit an employee to work for a work period of more than ten (10) hours per day without
13 providing the employee with a second uninterrupted meal period of not less than thirty (30)
14 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
15 meal period may be waived by mutual consent of the employer and the employee only if the
16 first meal period was not waived.

17 59. During the relevant time period set forth herein, Plaintiffs and the other class
18 members who were scheduled to work for a period of time no longer than six (6) hours, and
19 who did not waive their legally-mandated meal periods by mutual consent, were required to
20 work for periods longer than five (5) hours without an uninterrupted meal period of not less
21 than thirty (30) minutes and/or without a rest period.

22 60. During the relevant time period set forth herein, Plaintiffs and the other class
23 members who were scheduled to work for a period of time no longer than twelve (12) hours,
24 and who did not waive their legally-mandated meal periods by mutual consent, were required
25 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
26 than thirty (30) minutes and/or without a rest period.

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1 61. During the relevant time period set forth herein, Plaintiffs and the other class
2 members who were scheduled to work for a period of time in excess of six (6) hours were
3 required to work for periods longer than five (5) hours without an uninterrupted meal period
4 of not less than thirty (30) minutes and/or without a rest period.

5 62. During the relevant time period set forth herein, Plaintiffs and the other class
6 members who were scheduled to work for a period of time in excess of twelve (12) hours were
7 required to work for periods longer than ten (10) hours without an uninterrupted meal period
8 of not less than thirty (30) minutes and/or without a rest period.

9 63. During the relevant time period set forth herein, Defendants intentionally and
10 willfully required Plaintiffs and the other class members to work during meal periods and
11 failed to compensate Plaintiffs and the other class members the full meal period premium for
12 work performed during meal periods.

13 64. During the relevant time period set forth herein, Defendants failed to pay
14 Plaintiffs and the other class members the full meal period premium due pursuant to Labor
15 Code section 226.7.

16 65. Defendants' conduct violates the applicable IWC Wage Order and Labor Code
17 sections 226.7 and 512(a).

18 66. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(c),
19 Plaintiffs and the other class members are entitled to recover from Defendants one additional
20 hour of pay at the employee's regular rate of compensation for each workday that the meal
21 period was not provided.

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1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.7)**

3 **(Against YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA**
4 **YMCA OF THE EAST BAY and DOES 1 through 100)**

5 67. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 66, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 68. During the relevant time period set forth herein, the applicable IWC Wage Order
9 and Labor Code section 226.7 were applicable to Plaintiffs’ and the other class members’
10 employment by Defendants.

11 69. During the relevant time period set forth herein, Labor Code section 226.7
12 provides that no employer shall require an employee to work during any rest period mandated
13 by the applicable IWC Wage Order.

14 70. During the relevant time period set forth herein, the applicable IWC Wage Order
15 provides that “[e]very employer shall authorize and permit all employees to take rest periods,
16 which insofar as practicable shall be in the middle of each work period” and that the “rest
17 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
18 rest time per four (4) hours or major fraction thereof” unless the total daily work time is less
19 than three and one-half (3 ½) hours.

20 71. During the relevant time period set forth herein, Defendants required Plaintiffs
21 and the other class members to work four (4) or more hours without authorizing or permitting
22 a ten (10) minute rest period per each four (4) hour period worked.

23 72. During the relevant time period set forth herein, Defendants willfully required
24 Plaintiffs and the other class members to work during rest periods and failed to pay Plaintiffs
25 and the other class members the full rest period premium for work performed during rest
26 periods.

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73. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the full rest period premium due pursuant to Labor Code section 226.7.

74. Defendants' conduct violates applicable IWC Wage Orders and Labor Code section 226.7.

75. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular hourly rate of compensation for each workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

**(Against YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA
YMCA OF THE EAST BAY and DOES 1 through 100)**

76. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 75 and each and every part thereof with the same force and effect as though fully set forth herein.

77. During the relevant time period set forth herein, Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

78. During the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiffs and the other class members as required, pursuant to Labor Code sections 1194 and 1197.

79. Defendants' failure to pay Plaintiffs and the other class members the minimum wage as required violates Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

1 80. Pursuant to Labor Code section 1194.2, Plaintiffs and the other class members
2 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
3 and interest thereon.

4 **FIFTH CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 201 and 202)**

6 **(Against YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA**
7 **YMCA OF THE EAST BAY and DOES 1 through 100)**

8 81. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
9 through 80, and each and every part thereof with the same force and effect as though fully set
10 forth herein.

11 82. During the relevant time period set forth herein, Labor Code sections 201 and
12 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
13 time of discharge are due and payable immediately, and if an employee quits their
14 employment, their wages shall become due and payable not later than seventy-two (72) hours
15 thereafter, unless the employee has given seventy-two (72) hours’ notice of their intention to
16 quit, in which case the employee is entitled to their wages at the time of quitting.

17 83. During the relevant time period set forth herein, Defendants intentionally and
18 willfully failed to pay Plaintiffs and the other class members who are no longer employed by
19 Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
20 Defendants’ employ.

21 84. Defendants’ failure to pay Plaintiffs and the other class members who are no
22 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours
23 of their leaving Defendants’ employ, is in violation of Labor Code sections 201 and 202.

24 85. Labor Code section 203 provides that if an employer willfully fails to pay wages
25 owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
26 as a penalty from the due date thereof at the same rate until paid or until an action is
27 commenced; but the wages shall not continue for more than thirty (30) days.

86. Plaintiffs and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

**(Against YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA
YMCA OF THE EAST BAY and DOES 1 through 100)**

87. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 86, and each and every part thereof with the same force and effect as though fully set forth herein.

88. During the relevant time period set forth herein, Labor Code section 226(a) provides that every employer shall furnish each of their employees an accurate itemized statement in writing showing: (a) gross wages earned; (b) total hours worked by the employee; (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (d) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (e) net wages earned; (f) the inclusive dates of the period for which the employee is paid; (g) the name of the employee and the last four digits of their social security number or an employee identification number other than a social security number; (h) the name and address of the legal entity that is the employer; and (i) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

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1 89. Defendants have intentionally and willfully failed to provide Plaintiffs and the
2 other class members with complete and accurate wage statements. The deficiencies include,
3 but are not limited to, the failure to include the total number of hours worked by Plaintiffs and
4 other class members.

5 90. As a result of Defendants' violation of Labor Code section 226(a), Plaintiffs and
6 the other class members have suffered injury and damage to their statutorily protected rights.

7 91. Plaintiffs and the other class members have been injured by Defendants'
8 intentional and willful violation of Labor Code section 226(a) because they were denied both
9 their legal right to receive, and their protected interest in receiving, accurate and itemized
10 wage statements pursuant to Labor Code section 226(a).

11 92. Plaintiffs and the other class members are entitled to recover from Defendants
12 the greater of their actual damages caused by Defendants' failure to comply with Labor Code
13 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

14 93. Plaintiffs and the other class members are also entitled to injunctive relief to
15 ensure compliance with this section, pursuant to Labor Code section 226(h).

16 **SEVENTH CAUSE OF ACTION**

17 **(Violation of California Labor Code §§ 2800 and 2802)**

18 **(Against YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA**
19 **YMCA OF THE EAST BAY and DOES 1 through 100)**

20 94. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
21 through 93, and each and every part thereof with the same force and effect as though fully set
22 forth herein.

23 95. Pursuant to Labor Code sections 2800 and 2802, an employer must reimburse its
24 employee for all necessary expenditures incurred by the employee in direct consequence of the
25 discharge of their job duties or in direct consequence of their obedience to the directions of the
26 employer.

27 ///

96. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the other class members for all necessary business-related expenses and costs. Plaintiffs and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, *et seq.*)

**(Against YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA
YMCA OF THE EAST BAY and DOES 1 through 100)**

97. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 96, and each and every part thereof with the same force and effect as though fully set forth herein.

98. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

99. On March 21, 2024, Plaintiffs provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code they contend were violated and the theories supporting their contentions. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the written notice to the LWDA. Plaintiffs believe that on or about May 27, 2024, the sixty-five (65) day notice period will expire, and the LWDA will not take any action to investigate or prosecute this matter.

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1 100. On April 8, 2024, Plaintiffs provided an amended written notice to the LWDA,
2 updating the name of the employer to “Young Men’s Christian Association of the East Bay,
3 dba YMCA of the East Bay”. Attached hereto as **Exhibit 2** and incorporated by reference is a
4 copy of the amended written notice to the LWDA. Plaintiffs believe that on or about June 12,
5 2024, the sixty-five (65) day notice period will expire, and the LWDA will not take any action
6 to investigate or prosecute this matter. Therefore, Plaintiffs exhausted the statutory time period
7 to bring this action.

8 101. Plaintiffs and the other hourly-paid or non-exempt employees are “aggrieved
9 employees” as defined by Labor Code section 2699(c) in that they are of all current and former
10 non-exempt California employees of Defendants who were employed by Defendants at any
11 time between August 4, 2022, and June 5, 2024, and one or more of the alleged violations was
12 committed against them.

13 **Failure to Pay Minimum and Overtime Wages**

14 102. At all times relevant herein, Defendants were required to compensate their non-
15 exempt employees minimum wages for all hours worked and overtime wages for all hours
16 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
17 mandate of Labor Code sections 510, 1194, 1197, and 1198.

18 103. As a policy and practice, Defendants failed to compensate Plaintiffs and the
19 other aggrieved current and former employees for all hours worked, resulting in a failure to
20 pay all minimum wages and overtime wages, where applicable.

21 **Failure to Provide Meal Periods and Rest Breaks**

22 104. In accordance with the mandates of Labor Code sections 226.7 and 512,
23 Defendants were required to authorize and permit their non-exempt employees to take a 10-
24 minute rest break for every four (4) hours worked or major fraction thereof and were further
25 required to provide their non-exempt employees with a 30-minute meal period for every five
26 (5) hours worked.

27 ///

1 105. As a policy and practice, Defendants failed to provide Plaintiffs and the other
2 aggrieved current and former employees with legally mandated meal periods and rest breaks
3 and failed to pay proper compensation for this failure.

4 **Failure to Timely Pay Wages During Employment**

5 106. At all times relevant herein, Defendants were required to pay their employees
6 within a specified time period pursuant to the mandate of Labor Code section 204.

7 107. As a policy and practice, Defendants failed to pay Plaintiffs and the other
8 aggrieved current and former employees all wages due and owing them within the required
9 time period.

10 **Failure to Timely Pay Wages Upon Termination**

11 108. At all times relevant herein, Defendants were required to pay their employees
12 all wages owed in a timely fashion at the end of employment pursuant to Labor Code sections
13 201 to 204.

14 109. As a result of Defendants' Labor Code violations alleged above, Defendants
15 failed to pay Plaintiffs and the other aggrieved former employees their final wages pursuant
16 to Labor Code sections 201 to 204 and accordingly owe waiting time penalties pursuant to
17 Labor Code section 203.

18 **Failure to Provide Complete and Accurate Wage Statements**

19 110. At all times relevant herein, Defendants were required to keep accurate records
20 regarding their California employees pursuant to the mandate of Labor Code sections 226,
21 1174, and 1776.

22 111. As a result of Defendants' various Labor Code violations, Defendants failed to
23 keep accurate records regarding Plaintiffs and the other aggrieved current and former
24 employees. For example, Defendants failed in their affirmative obligation to keep accurate
25 records regarding Plaintiffs and the other aggrieved current and former employees' gross
26 wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly
27 rates and the number of hours worked at each hourly rate.
28

1 **Failure to Provide and Properly Pay Paid Sick Days**

2 112. At all times relevant herein, Defendants were required to provide their
3 employees with paid sick days at their regular rate of pay pursuant to Labor Code section 246
4 *at seq.*

5 113. As a policy and practice, Defendants failed to provide Plaintiffs and other
6 aggrieved current and former employees with paid sick days at the proper rate of pay pursuant
7 to Labor Code section 246 *et seq.*

8 **Failure to Reimburse Business Expenses**

9 114. At all times relevant herein, Defendants were required to reimburse its
10 employees for any and all necessary expenditures or losses incurred by the employees in direct
11 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
12 sections 2800 and 2802.

13 115. As a policy and practice, Defendants failed to reimburse Plaintiffs and the other
14 aggrieved current and former employees for all business expenses incurred and owing them
15 within the required time period.

16 **Penalties**

17 116. Pursuant to Labor Code section 2699, Plaintiffs, individually, and on behalf of
18 the other current and former aggrieved employees, request and are entitled to recover from
19 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but
20 not limited to:

- 21 a. Penalties under Labor Code section 2699 in the amount of a hundred
22 dollars (\$100) for each aggrieved employee per pay period for the initial
23 violation, and two hundred dollars (\$200) for each aggrieved employee
24 per pay period for each subsequent violation;

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- b. Penalties under Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)

**(Against YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE EAST BAY, DBA
YMCA OF THE EAST BAY and DOES 1 through 100)**

117. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 116, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 118. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
2 unlawful and harmful to Plaintiffs, the other class members, to the general public, and
3 Defendants' competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the
4 public interest within the meaning of Code of Civil Procedure section 1021.5.

5 119. Defendants' activities as alleged herein are violations of the law, and constitute
6 unlawful business acts and practices in violation of Business & Professions Code sections
7 17200, *et seq.*

8 120. A violation of Business & Professions Code sections 17200, *et seq.* may be
9 predicated on the violation of any state or federal law. In this instant case, Defendants' policy
10 and practice of requiring Plaintiffs and the other class members work overtime hours without
11 paying them proper compensation violate Labor Code sections 510 and 1198. Additionally,
12 Defendants' policy and practice of requiring Plaintiffs and the other class members to work
13 through their meal and rest periods without paying them proper compensation violate Labor
14 Code sections 226.7 and 512(a). Defendants' policy and practice of failing to timely pay wages
15 to Plaintiffs and the other class members violate Labor Code sections 201 and 202. Defendants
16 also violated Labor Code sections 226(a), 1194, 1197, 2800, and 2802.

17 121. As a result of the herein described violations of the law, Defendants unlawfully
18 gained an unfair advantage over other businesses.

19 122. Plaintiffs and the other class members have been personally injured by
20 Defendants' unlawful business acts and practices as alleged herein, including but not
21 necessarily limited to the loss of money and/or property.

22 123. Pursuant to Business & Professions Code sections 17200, *et seq.*, Plaintiffs and
23 the other class members are entitled to restitution of the wages withheld and retained by
24 Defendants during a period that commences four years prior to the filing of this Complaint;
25 an award of attorneys' fees pursuant to Code of Civil procedure section 1021.5 and other
26 applicable laws; and an award of costs.

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28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs, individually, and on behalf of other members of the general public similarly
3 situated, request a trial by jury.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of all other members of the
6 general public similarly situated, pray for relief and judgment against Defendants, jointly and
7 severally, as follows:

8 **Class Certification**

- 9 1. That this action be certified as a class action;
10 2. That Plaintiffs be appointed as representatives of the Class;
11 3. That counsel for Plaintiffs be appointed as Class Counsel; and
12 4. That Defendants provide to Class Counsel immediately the names and most
13 current contact information (address, e-mail, and telephone numbers) of all class members.

14 **As to the First Cause of Action**

- 15 5. That the Court declare, adjudge, and decree that Defendants violated Labor Code
16 sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
17 overtime wages due to Plaintiffs and the other class members;
18 6. For general unpaid wages at overtime wage rates and such general and special
19 damages as may be appropriate;
20 7. For pre-judgment interest on any unpaid overtime compensation commencing
21 from the date such amounts were due;
22 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor
23 Code section 1194; and
24 9. For such other and further relief as the court may deem just and proper.

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As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 226.7 and 512(a) and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class members;

11. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge, and decree that Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and the other class members;

18. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor Code section 1194(a);

27. For liquidated damages pursuant to Labor Code section 1194.2; and

28. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

29. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiffs and the other class members no longer employed by Defendants;

30. For all actual, consequential, and incidental losses and damages, according to proof;

31. For statutory wage penalties pursuant to Labor Code section 203 for the other class members who have left Defendants' employ;

32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the court may deem just and proper.

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1 **As to the Sixth Cause of Action**

2 34. That the Court declare, adjudge, and decree that Defendants violated the record
3 keeping provisions of Labor Code section 226(a) and applicable IWC Wage Orders as to
4 Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage
5 statements thereto;

6 35. For actual, consequential, and incidental losses and damages, according to proof;

7 36. For statutory penalties pursuant to Labor Code section 226(e);

8 37. For injunctive relief to ensure compliance with this section, pursuant to Labor
9 Code section 226(h); and

10 38. For such other and further relief as the court may deem just and proper.

11 **As to the Seventh Cause of Action**

12 39. That the Court declare, adjudge, and decree that Defendants violated Labor Code
13 sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class members
14 for all necessary business-related expenses as required by Labor Code sections 2800 and 2802;

15 40. For actual, consequential, and incidental losses and damages, according to proof;

16 41. For the imposition of civil penalties and/or statutory penalties;

17 42. For punitive damages and/or exemplary damages according to proof at trial;

18 43. For reasonable attorneys' fees and costs of suit incurred herein; and

19 44. For such other and further relief as the court may deem just and proper.

20 **As to the Eighth Cause of Action**

21 45. That the Court declare, adjudge, and decree that Defendants violated Labor Code
22 sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of
23 Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 229, 246(l), 510,
24 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802;

25 46. Upon this Cause of Action, for costs and attorneys' fees pursuant to Labor Code
26 sections 210, 1194, and 2699, and any other applicable statute; and

27 47. For such other and further relief as the Court may deem just and proper.
28

As to the Ninth Cause of Action

48. That the Court declare, adjudge, and decree that Defendants violated Business & Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and the other class members, failing to pay Plaintiffs' and the other class members' wages timely as required by Labor Code sections 201 and 202.

49. For restitution of unpaid wages to Plaintiffs and other class members and all pre-judgment interest from the day such amounts were due and payable;

50. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of Business & Professions Code sections 17200, *et seq.*;

51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code of Civil Procedure section 1021.5;

52. For injunctive relief to ensure compliance with this section, pursuant to Business & Professions Code sections 17200, *et seq.*; and

53. For such other and further relief as the court may deem just and proper.

Dated: April 29, 2024

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Attorneys for Plaintiffs

EXHIBIT 1

March 21, 2024

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: YMCA of the East Bay

Dear Representative:

We have been retained to represent Christina Nance and Dereka Williams against YMCA of the Easy Bay (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, for violations of California wage-and-hour laws (collectively referred to as "YMCA").

Ms. Nance and Ms. Williams are pursuing their California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Nance and Ms. Williams may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

YMCA is a California nonprofit corporation headquartered at 2111 Martin Luther King Jr. Way, Berkeley, California 94704.

YMCA employed Ms. Nance and Ms. Williams as hourly-paid, non-exempt employees until in or around December of 2019 and June of 2022 respectively in the State of California. YMCA directly controlled the wages, hours, and/or working conditions of Ms. Nance and Ms. Williams and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Nance and Ms. Williams may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of YMCA within the State of California.

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YMCA failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum wages and overtime wages and for noncompliant meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Nance and Ms. Williams have standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at YMCA, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

YMCA has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission ("IWC") Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than 8 hours in one day and/or over 40 hours in one week without paying the premium overtime rates.

During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. YMCA expected Ms. Nance and Ms. Williams and other aggrieved employees to continue working off-the-clock despite having already completed their shifts. These instances of off-the-clock work included grading homework, preparing for upcoming classes, purchasing materials from stores, filling in daily status reports, and speaking to students' parents. In other words, YMCA only paid Ms. Nance and Ms. Williams and other aggrieved employees according to their shift schedules, not for all hours worked. YMCA would also pay Ms. Nance and Ms. Williams and other aggrieved employees bonuses that were non-discretionary in nature (*e.g.*, early shift premium, night premium). Yet, YMCA did not factor these bonuses into Ms. Nance and Ms. Williams and other aggrieved employees' regular rate of pay for purposes of overtime compensation, thereby underpaying them wages owed. Further, YMCA engaged in rounding practices and flat rate payments, which prevented Ms. Nance and Ms. Williams and other aggrieved employees from being fully compensated for all actual work time. Thus, Ms. Nance and Ms. Williams and other aggrieved employees were entitled to receive certain wages for minimum and overtime compensation, but they were not paid for all hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than 1 hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

During the relevant time period, YMCA failed to pay Ms. Nance and Ms. Williams and other aggrieved employees paid sick leave that complied with California Labor Code section 246. This included failing to pay paid sick leave at non-exempt employees' regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. Instead, YMCA paid sick leave at rates lower than Ms. Nance and Ms. Williams and other aggrieved employees' base hourly rate of pay.

California Labor Code sections 226.7 and 512 require employers to pay an employee 1 additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided.

During the relevant time period, YMCA frequently prevented employees from receiving compliant meal and rest breaks. Firstly, YMCA expected Ms. Nance and Ms. Williams and other aggrieved employees to regularly work through their meal and rest breaks to meet the demands of their jobs. Secondly, YMCA was chronically understaffed, which meant Ms. Nance and Ms. Williams and other aggrieved employees had no choice but to take short, missed, and/or late meal and rest breaks to address any unexpected issues due to the lack of coverage. Thirdly, YMCA did not permit Ms. Nance and Ms. Williams and other aggrieved employees to take duty-free rest breaks, meaning they were not relieved of their duties when attempting to take their rest breaks. In fact, up until 2021, YMCA's rest break policies expressly prohibited Ms. Nance and Ms. Williams and other aggrieved employees from leaving the work premises during their rest breaks. Finally, despite these facts, YMCA failed to compensate Ms. Nance and Ms. Williams and other aggrieved employees all the premium wages they were owed properly and consistently.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his 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 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an 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 or until an action therefor is commenced. But the wages shall not continue for more than 30 days.

During the relevant time period, YMCA failed to pay Ms. Nance and Ms. Williams and other aggrieved employees all wages, including as a result of uncompensated off-the-clock work, unpaid sick leave, unpaid overtime wages, and unpaid premium wages for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code sections 201 through 203. Therefore, YMCA is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. California Labor Code section 204 also requires that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. In addition, California Labor Code section 204 requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

During the relevant time period, YMCA failed to pay Ms. Nance and Ms. Williams and other aggrieved employees all wages due to them, including as a result of uncompensated off-the-clock work, unpaid sick leave, unpaid overtime wages, and unpaid premium wages owed for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees.

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During the relevant time period, YMCA did not provide Ms. Nance and Ms. Williams and other aggrieved employees with complete and accurate itemized wage statements. The wage statements Ms. Nance and Ms. Williams and other aggrieved employees received from YMCA were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include: (1) gross wages earned by Ms. Nance and Ms. Williams and other aggrieved employees; (2) total hours worked by Ms. Nance and Ms. Williams and other aggrieved employees; (3) all deductions for Ms. Nance and Ms. Williams and other aggrieved employees; (4) net wages earned by Ms. Nance and Ms. Williams and other aggrieved employees; and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Nance and Ms. Williams and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the IWC Wage Order shall be subject to a civil penalty. The civil penalty is as follows: (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the affected employee.

During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees have been denied their wages and premium wages and are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep at a central location in the state or at the plants or establishments at which employees are employed payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than 3 years.

During the relevant time period, YMCA failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Ms. Nance and Ms. Williams and other aggrieved employees.

California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

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During the relevant time period, YMCA did not provide Ms. Nance and Ms. Williams and other aggrieved employees with the minimum wages to which they were entitled despite having constructive and actual knowledge of off-the-clock work, including post-shift work and work performed during meal and rest breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees incurred various necessary business-related expenses that were not reimbursed by YMCA. YMCA expected Ms. Nance and Ms. Williams and other aggrieved employees personal cell phones to communicate with coworkers and students' parents and send out emails. Similarly, YMCA also required Ms. Nance and Ms. Williams and other aggrieved employees to purchase supplies for students to complete class assignments and/or projects. Finally, YMCA expected Ms. Nance and Ms. Williams and other aggrieved employees to use their personal vehicles to travel to different work locations owned by YMCA. Despite these facts, YMCA never reimbursed Ms. Nance and Ms. Williams and other aggrieved employees for incurring such business-related expenses.

We believe that Ms. Nance and Ms. Williams and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant must send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Nance and Ms. Williams will seek these penalties on their own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of YMCA within 1 year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Email Only):

Kurt Bockes
kbockes@littler.com
Angela Rafoth
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Robert Geiger
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Na Rae Kim
nakim@littler.com

Counsel for YMCA

EXHIBIT 2

April 8, 2024

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

**Re: Young Men's Christian Association of the East Bay, dba YMCA of the East Bay
LWDA Case No. 1017849-24**

Dear Representative:

We hereby amend our March 21, 2024 letter sent to your office in compliance with the reporting requirements of California Labor Code section 2699.3. A true and correct copy of the March 21, 2024 letter is attached to this submission as **Exhibit A** for reference. We are amending this notice to supplement the letter originally submitted to update the name of the employer.

We have been retained to represent Christina Nance and Dereka Williams against Young Men's Christian Association of the East Bay, dba YMCA of the East Bay (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, for violations of California wage-and-hour laws (collectively referred to as "YMCA of the East Bay").

Ms. Nance and Ms. Williams are pursuing their California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Nance and Ms. Williams may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

YMCA of the East Bay is a California nonprofit corporation headquartered at 2111 Martin Luther King Jr. Way, Berkeley, California 94704.

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YMCA of the East Bay employed Ms. Nance and Ms. Williams as hourly-paid, non-exempt employees until in or around December of 2019 and June of 2022 respectively in the State of California. YMCA of the East Bay directly controlled the wages, hours, and/or working conditions of Ms. Nance and Ms. Williams and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Nance and Ms. Williams may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of YMCA of the East Bay within the State of California.

YMCA of the East Bay failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum wages and overtime wages and for noncompliant meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Nance and Ms. Williams have standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at YMCA of the East Bay, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

YMCA of the East Bay has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission ("IWC") Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than 8 hours in one day and/or over 40 hours in one week without paying the premium overtime rates.

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During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. YMCA of the East Bay expected Ms. Nance and Ms. Williams and other aggrieved employees to continue working off-the-clock despite having already completed their shifts. These instances of off-the-clock work included grading homework, preparing for upcoming classes, purchasing materials from stores, filling in daily status reports, and speaking to students' parents. In other words, YMCA of the East Bay only paid Ms. Nance and Ms. Williams and other aggrieved employees according to their shift schedules, not for all hours worked. YMCA of the East Bay would also pay Ms. Nance and Ms. Williams and other aggrieved employees bonuses that were non-discretionary in nature (e.g., early shift premium, night premium). Yet, YMCA of the East Bay did not factor these bonuses into Ms. Nance and Ms. Williams and other aggrieved employees' regular rate of pay for purposes of overtime compensation, thereby underpaying them wages owed. Further, YMCA of the East Bay engaged in rounding practices and flat rate payments, which prevented Ms. Nance and Ms. Williams and other aggrieved employees from being fully compensated for all actual work time. Thus, Ms. Nance and Ms. Williams and other aggrieved employees were entitled to receive certain wages for minimum and overtime compensation, but they were not paid for all hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than 1 hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

During the relevant time period, YMCA of the East Bay failed to pay Ms. Nance and Ms. Williams and other aggrieved employees paid sick leave that complied with California Labor Code section 246. This included failing to pay paid sick leave at non-exempt employees' regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. Instead, YMCA of the East Bay paid sick leave at rates lower than Ms. Nance and Ms. Williams and other aggrieved employees' base hourly rate of pay.

California Labor Code sections 226.7 and 512 require employers to pay an employee 1 additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided.

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During the relevant time period, YMCA of the East Bay frequently prevented employees from receiving compliant meal and rest breaks. Firstly, YMCA of the East Bay expected Ms. Nance and Ms. Williams and other aggrieved employees to regularly work through their meal and rest breaks to meet the demands of their jobs. Secondly, YMCA of the East Bay was chronically understaffed, which meant Ms. Nance and Ms. Williams and other aggrieved employees had no choice but to take short, missed, and/or late meal and rest breaks to address any unexpected issues due to the lack of coverage. Thirdly, YMCA of the East Bay did not permit Ms. Nance and Ms. Williams and other aggrieved employees to take duty-free rest breaks, meaning they were not relieved of their duties when attempting to take their rest breaks. In fact, up until 2021, YMCA of the East Bay's rest break policies expressly prohibited Ms. Nance and Ms. Williams and other aggrieved employees from leaving the work premises during their rest breaks. Finally, despite these facts, YMCA of the East Bay failed to compensate Ms. Nance and Ms. Williams and other aggrieved employees all the premium wages they were owed properly and consistently.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his 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 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an 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 or until an action therefor is commenced. But the wages shall not continue for more than 30 days.

During the relevant time period, YMCA of the East Bay failed to pay Ms. Nance and Ms. Williams and other aggrieved employees all wages, including as a result of uncompensated off-the-clock work, unpaid sick leave, unpaid overtime wages, and unpaid premium wages for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code sections 201 through 203. Therefore, YMCA of the East Bay is liable under California Labor Code section 203.

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California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. California Labor Code section 204 also requires that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. In addition, California Labor Code section 204 requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

During the relevant time period, YMCA of the East Bay failed to pay Ms. Nance and Ms. Williams and other aggrieved employees all wages due to them, including as a result of uncompensated off-the-clock work, unpaid sick leave, unpaid overtime wages, and unpaid premium wages owed for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees.

During the relevant time period, YMCA of the East Bay did not provide Ms. Nance and Ms. Williams and other aggrieved employees with complete and accurate itemized wage statements. The wage statements Ms. Nance and Ms. Williams and other aggrieved employees received from YMCA of the East Bay were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include: (1) gross wages earned by Ms. Nance and Ms. Williams and other aggrieved employees; (2) total hours worked by Ms. Nance and Ms. Williams and other aggrieved employees; (3) all deductions for Ms. Nance and Ms. Williams and other aggrieved employees; (4) net wages earned by Ms. Nance and Ms. Williams and other aggrieved employees; and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Nance and Ms. Williams and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the IWC Wage Order shall be subject to a civil penalty. The civil penalty is as follows: (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the affected employee.

During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees have been denied their wages and premium wages and are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep at a central location in the state or at the plants or establishments at which employees are employed payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than 3 years.

During the relevant time period, YMCA of the East Bay failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Ms. Nance and Ms. Williams and other aggrieved employees.

California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

During the relevant time period, YMCA of the East Bay did not provide Ms. Nance and Ms. Williams and other aggrieved employees with the minimum wages to which they were entitled despite having constructive and actual knowledge of off-the-clock work, including post-shift work and work performed during meal and rest breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees incurred various necessary business-related expenses that were not reimbursed by YMCA of the East Bay. YMCA of the East Bay expected Ms. Nance and Ms. Williams and other aggrieved employees personal cell phones to communicate with coworkers and students' parents and send out emails. Similarly, YMCA of the East Bay also required Ms. Nance and Ms. Williams and other aggrieved employees to purchase supplies for students to complete class assignments and/or projects. Finally, YMCA of the East Bay expected Ms. Nance and Ms. Williams and other aggrieved employees to use their personal vehicles to travel to different work locations owned by YMCA of the East Bay. Despite these facts, YMCA of the East Bay never reimbursed Ms. Nance and Ms. Williams and other aggrieved employees for incurring such business-related expenses.

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We believe that Ms. Nance and Ms. Williams and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant must send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Nance and Ms. Williams will seek these penalties on their own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of YMCA of the East Bay within 1 year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Email Only):

Kurt Bockes

kbockes@littler.com

Angela Rafoth

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Robert Geiger

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Na Rae Kim

nakim@littler.com

EXHIBIT A

March 21, 2024

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: YMCA of the East Bay

Dear Representative:

We have been retained to represent Christina Nance and Dereka Williams against YMCA of the Easy Bay (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, for violations of California wage-and-hour laws (collectively referred to as "YMCA").

Ms. Nance and Ms. Williams are pursuing their California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Nance and Ms. Williams may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

YMCA is a California nonprofit corporation headquartered at 2111 Martin Luther King Jr. Way, Berkeley, California 94704.

YMCA employed Ms. Nance and Ms. Williams as hourly-paid, non-exempt employees until in or around December of 2019 and June of 2022 respectively in the State of California. YMCA directly controlled the wages, hours, and/or working conditions of Ms. Nance and Ms. Williams and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Nance and Ms. Williams may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of YMCA within the State of California.

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YMCA failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum wages and overtime wages and for noncompliant meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Nance and Ms. Williams have standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at YMCA, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

YMCA has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission ("IWC") Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than 8 hours in one day and/or over 40 hours in one week without paying the premium overtime rates.

During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. YMCA expected Ms. Nance and Ms. Williams and other aggrieved employees to continue working off-the-clock despite having already completed their shifts. These instances of off-the-clock work included grading homework, preparing for upcoming classes, purchasing materials from stores, filling in daily status reports, and speaking to students' parents. In other words, YMCA only paid Ms. Nance and Ms. Williams and other aggrieved employees according to their shift schedules, not for all hours worked. YMCA would also pay Ms. Nance and Ms. Williams and other aggrieved employees bonuses that were non-discretionary in nature (*e.g.*, early shift premium, night premium). Yet, YMCA did not factor these bonuses into Ms. Nance and Ms. Williams and other aggrieved employees' regular rate of pay for purposes of overtime compensation, thereby underpaying them wages owed. Further, YMCA engaged in rounding practices and flat rate payments, which prevented Ms. Nance and Ms. Williams and other aggrieved employees from being fully compensated for all actual work time. Thus, Ms. Nance and Ms. Williams and other aggrieved employees were entitled to receive certain wages for minimum and overtime compensation, but they were not paid for all hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than 1 hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

During the relevant time period, YMCA failed to pay Ms. Nance and Ms. Williams and other aggrieved employees paid sick leave that complied with California Labor Code section 246. This included failing to pay paid sick leave at non-exempt employees' regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. Instead, YMCA paid sick leave at rates lower than Ms. Nance and Ms. Williams and other aggrieved employees' base hourly rate of pay.

California Labor Code sections 226.7 and 512 require employers to pay an employee 1 additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided.

During the relevant time period, YMCA frequently prevented employees from receiving compliant meal and rest breaks. Firstly, YMCA expected Ms. Nance and Ms. Williams and other aggrieved employees to regularly work through their meal and rest breaks to meet the demands of their jobs. Secondly, YMCA was chronically understaffed, which meant Ms. Nance and Ms. Williams and other aggrieved employees had no choice but to take short, missed, and/or late meal and rest breaks to address any unexpected issues due to the lack of coverage. Thirdly, YMCA did not permit Ms. Nance and Ms. Williams and other aggrieved employees to take duty-free rest breaks, meaning they were not relieved of their duties when attempting to take their rest breaks. In fact, up until 2021, YMCA's rest break policies expressly prohibited Ms. Nance and Ms. Williams and other aggrieved employees from leaving the work premises during their rest breaks. Finally, despite these facts, YMCA failed to compensate Ms. Nance and Ms. Williams and other aggrieved employees all the premium wages they were owed properly and consistently.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his 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 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an 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 or until an action therefor is commenced. But the wages shall not continue for more than 30 days.

During the relevant time period, YMCA failed to pay Ms. Nance and Ms. Williams and other aggrieved employees all wages, including as a result of uncompensated off-the-clock work, unpaid sick leave, unpaid overtime wages, and unpaid premium wages for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code sections 201 through 203. Therefore, YMCA is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. California Labor Code section 204 also requires that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. In addition, California Labor Code section 204 requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

During the relevant time period, YMCA failed to pay Ms. Nance and Ms. Williams and other aggrieved employees all wages due to them, including as a result of uncompensated off-the-clock work, unpaid sick leave, unpaid overtime wages, and unpaid premium wages owed for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees.

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During the relevant time period, YMCA did not provide Ms. Nance and Ms. Williams and other aggrieved employees with complete and accurate itemized wage statements. The wage statements Ms. Nance and Ms. Williams and other aggrieved employees received from YMCA were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include: (1) gross wages earned by Ms. Nance and Ms. Williams and other aggrieved employees; (2) total hours worked by Ms. Nance and Ms. Williams and other aggrieved employees; (3) all deductions for Ms. Nance and Ms. Williams and other aggrieved employees; (4) net wages earned by Ms. Nance and Ms. Williams and other aggrieved employees; and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Nance and Ms. Williams and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the IWC Wage Order shall be subject to a civil penalty. The civil penalty is as follows: (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the affected employee.

During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees have been denied their wages and premium wages and are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep at a central location in the state or at the plants or establishments at which employees are employed payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than 3 years.

During the relevant time period, YMCA failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Ms. Nance and Ms. Williams and other aggrieved employees.

California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

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During the relevant time period, YMCA did not provide Ms. Nance and Ms. Williams and other aggrieved employees with the minimum wages to which they were entitled despite having constructive and actual knowledge of off-the-clock work, including post-shift work and work performed during meal and rest breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

During the relevant time period, Ms. Nance and Ms. Williams and other aggrieved employees incurred various necessary business-related expenses that were not reimbursed by YMCA. YMCA expected Ms. Nance and Ms. Williams and other aggrieved employees personal cell phones to communicate with coworkers and students' parents and send out emails. Similarly, YMCA also required Ms. Nance and Ms. Williams and other aggrieved employees to purchase supplies for students to complete class assignments and/or projects. Finally, YMCA expected Ms. Nance and Ms. Williams and other aggrieved employees to use their personal vehicles to travel to different work locations owned by YMCA. Despite these facts, YMCA never reimbursed Ms. Nance and Ms. Williams and other aggrieved employees for incurring such business-related expenses.

We believe that Ms. Nance and Ms. Williams and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant must send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Nance and Ms. Williams will seek these penalties on their own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of YMCA within 1 year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Email Only):

Kurt Bockes
kbockes@littler.com
Angela Rafoth
arafoth@littler.com
Robert Geiger
rgeiger@littler.com
Na Rae Kim
nakim@littler.com

Counsel for YMCA

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic address is hdonnelly@justicelawcorp.com.

On April 29, 2024, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Kurt Bockes (kbockes@littler.com)
Robert Geiger (rgeiger@littler.com)
Na Rae Kim (nakim@littler.com)

Legal Staff:

jvenegas@littler.com

LITTLER MENDELSON, P.C.

101 Second Street, Suite 1000
San Francisco, California 94105

Attorney(s) for Defendant Young Men's Christian Association of the East Bay, dba YMCA of the East Bay

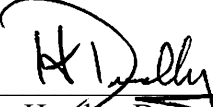
[X] BY U.S. MAIL

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 29, 2024, at Pasadena, California.



Heather Donnelly

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic address is hdonnelly@justicelawcorp.com.

On April 29, 2024, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Nance, et al. v. Young Men's Christian Association of the East Bay dba YMCA of the East Bay**
LWDA/Court Case No.: **LWDA Case No.: CM-1017849-24**
Court Case No.: 23CV040009
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

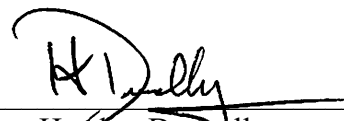
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 29, 2024, at Pasadena, California.


Heather Donnelly