

# EXHIBIT B

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

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Clerk of the Superior Court  
By Mark Gutierrez, Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ORANGE**

ANTHONY TUNSTALL, as an individual  
and on behalf of all others similarly  
situated,

Plaintiff,

vs.

SUNRISE SENIOR LIVING  
MANAGEMENT, INC., a Virginia  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: 30-2019-01077618-CU-OE-CJC

**CLASS AND REPRESENTATIVE ACTION  
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE § 226(a);
- (2) VIOLATION OF CAL. LABOR CODE § 2698, *ET SEQ.*

Judge Theodore Howard

**DEMAND OVER \$25,000.00**

1 Plaintiff Anthony Tunstall ("Plaintiff") submits this Class and Representative Action  
2 Complaint ("Complaint") against Sunrise Senior Living Management, Inc. ("Defendant"), and  
3 DOES 1 through 50 (collectively referred to as "Defendants"), on behalf of himself and a class of  
4 all other similarly situated current and former employees of Defendants for penalties and/or  
5 damages for failure to provide accurate itemized wage statements as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court's jurisdiction under  
8 California Labor Code sections 226 and 2698 *et seq.*, and the applicable Wage Orders of the  
9 California Industrial Welfare Commission ("IWC").

10 2. This Complaint challenges systemic illegal employment practices resulting in  
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,  
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious  
14 disregard to the rights of all employees in Defendants' failure to provide accurate itemized wage  
15 statements to their employees.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have  
17 engaged in, among other things a system of knowing and intentional violations of the California  
18 Labor Code.

19 **JURISDICTION AND VENUE**

20 5. The Court has jurisdiction over the violations of the California Labor Code sections  
21 226 and 2698 *et seq.*

22 6. Venue is proper in Orange County because Plaintiff worked for Defendant in Seal  
23 Beach, California.

24 **PARTIES**

25 7. Plaintiff worked for Sunrise Senior Living Management, Inc. as a care manager  
26 from on or about June 27, 2017 to on or about April 18, 2019. Throughout Plaintiff's employment  
27 with Defendant, Plaintiff was a non-exempt hourly employee.

28 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant

1 complained of in this action in ways that have deprived him of the rights guaranteed by California  
2 Labor Code sections 226 and 2698 *et seq.*

3 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Sunrise  
4 Senior Living Management, Inc. was and is a corporation doing business in the State of California  
5 and in the County of Orange. As such, and based upon all the facts and circumstances incident to  
6 Defendant's business, Defendant is subject to California Labor Code sections 226 and 2698.

7 10. Plaintiff does not know the true names or capacities, whether individual, partner or  
8 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said  
9 defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this  
10 complaint when the true names and capacities are known. Plaintiff is informed and believes and  
11 based thereon alleges that each of said fictitious defendants was responsible in some way for the  
12 matters alleged herein and proximately caused Plaintiff and members of the general public and  
13 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

14 11. At all times herein mentioned, each of said Defendants participated in the doing of  
15 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
16 Defendants, and each of them, were the agents, servants and employees of each of the other  
17 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting  
18 within the course and scope of said agency and employment.

19 12. Plaintiff is informed and believes, and based thereon alleges, that at all times  
20 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or  
21 joint venturer of, or working in concert with each of the other co-Defendants and was acting within  
22 the course and scope of such agency, employment, joint venture, or concerted activity. To the  
23 extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the  
24 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
25 Defendants.

26 13. At all times herein mentioned, Defendants, and each of them, were members of, and  
27 engaged in, a joint venture, partnership and common enterprise, and acting within the course and  
28 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

1 14. At all times herein mentioned, the acts and omissions of various Defendants, and  
2 each of them, concurred and contributed to the various acts and omissions of each and all of the  
3 other Defendants in proximately causing the injuries and damages as herein alleged. At all times  
4 herein mentioned, Defendants, and each of them, ratified each and every act or omission  
5 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and  
6 abetted the acts and omissions of each and all of the other Defendants in proximately causing the  
7 damages as herein alleged.

8 **CLASS ACTION ALLEGATIONS**

9 15. **Definition:** The named individual Plaintiff seeks class certification, pursuant to  
10 California Code of Civil Procedure section 382. Plaintiff proposes the following Class:

- 11 a. All current and former non-exempt employees of Defendant in the State of  
12 California who were paid overtime wages at any time from June 18, 2018,  
13 through the present.

14 16. **Numerosity and Ascertainability:** The members of the Class are so numerous that  
15 joinder of all members would be impractical, if not impossible. The identity of the members of the  
16 Class is readily ascertainable by review of Defendant's records, including payroll records. Plaintiff  
17 is informed and believes, and based thereon alleges, that Defendant failed to provide accurate  
18 itemized wage statements to employees in violation of Labor Code section 226.

19 17. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all  
20 necessary steps to represent fairly and adequately the interests of the class defined above.  
21 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the class and the  
22 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions  
23 in the past and currently have a number of wage-and-hour class actions pending in California state  
24 and federal courts.

25 18. Defendant uniformly administered a corporate policy, practice of failing to provide  
26 accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code section  
27 226.

28 19. **Common Question of Law and Fact:** There are predominant common questions

1 of law and fact and a community of interest amongst Plaintiff and the claims of the Class  
2 concerning Defendant's policy and practice of failing to provide accurate itemized wage  
3 statements to Plaintiff and the Class in violation of Labor Code section 226.

4       20.     **Typicality:** The claims of Plaintiff are typical of the claims of all members of the  
5 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner  
6 as the Class Members. As with other non-exempt California employees, Plaintiff was not provided  
7 proper and accurate itemized wage statements. Specifically, when overtime wages were paid, the  
8 wage statements failed to identify the hourly rate and number of hours used to calculate such  
9 wages. Therefore, Defendant violated Labor Code section 226 by not providing the requisite  
10 itemized wage statements to Plaintiff. As such, Plaintiff is a member of the Class and has suffered  
11 the alleged violation of Labor Code section 226.

12       21.     The California Labor Code sections upon which Plaintiff bases these claims are  
13 broadly remedial in nature. These laws and labor standards serve an important public interest in  
14 establishing minimum working conditions and standards in California. These laws and labor  
15 standards protect the average working employee from exploitation by employers who may seek to  
16 take advantage of superior economic and bargaining power in setting onerous terms and conditions  
17 of employment.

18       22.     The nature of this action and the format of laws available to Plaintiff and members  
19 of the Class identified herein make the class action format a particularly efficient and appropriate  
20 procedure to redress the wrongs alleged herein. If each employee were required to file an  
21 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage  
22 since it would be able to exploit and overwhelm the limited resources of each individual plaintiff  
23 with their vastly superior financial and legal resources. Requiring each class member to pursue and  
24 individual remedy would also discourage the assertion of lawful claims by employees who would  
25 be disinclined to file an action against their former and/or current employer for real and justifiable  
26 fear of retaliation and permanent damage to their careers at subsequent employment.

27       23.     The prosecution of separate actions by the individual class members, even if  
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to

1 individual class members against the Defendants and which would establish potentially  
2 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to  
3 individual class members which would, as a practical matter, be dispositive of the interest of the  
4 other class members not parties to the adjudications or which would substantially impair or impede  
5 the ability of the Class Members to protect their interests. Further, the claims of the individual  
6 members of the class are not sufficiently large to warrant vigorous individual prosecution  
7 considering all of the concomitant costs and expenses.

8 24. Such a pattern, practice and uniform administration of corporate policy regarding  
9 illegal employee compensation described herein is unlawful and creates an entitlement to recovery  
10 by Plaintiff and the Class identified herein, in a civil action, for applicable damages and/or  
11 penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California  
12 Labor Code sections 218.5 and 226, and Code of Civil Procedure section 1021.5.

13 25. Proof of a common business practice or factual pattern, which the named Plaintiff  
14 experienced and is representative of, will establish the right of each of the members of the Plaintiff  
15 Class to recovery on the causes of action alleged herein.

16 26. The Class is commonly entitled to a specific fund with respect to the compensation  
17 illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of  
18 those funds being improperly withheld by Defendants. This action is brought for the benefit of the  
19 entire class and will result in the creation of a common fund.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226(a)**

22 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

23 27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as though  
24 fully set forth herein.

25 28. Defendant, as a matter of policy and practice, did not provide complete and accurate  
26 wage statements to Plaintiff and the Class, in violation of Labor Code section 226(a).

27 29. Plaintiff and the Class were paid on an hourly basis. As such, the wage statements  
28 should have reflected all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee. However, the wage  
2 statements provided to Plaintiff and the Class failed to identify the hourly rate and number of hours  
3 used to calculate overtime wages.

4 30. Such a pattern, practice and uniform administration of corporate policy as described  
5 herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class, in a civil  
6 action, for all damages or penalties pursuant to Labor Code section 226, including interest thereon,  
7 attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226.

8 **SECOND CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

10 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

11 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as though  
12 fully set forth herein.

13 32. Plaintiff brings this cause of action on behalf of, and as a proxy for, the State of  
14 California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from May  
15 20, 2018, through the present.

16 33. On or about May 20, 2019, Plaintiff sent written notice to the California Labor &  
17 Workforce Development Agency ("LWDA") of Defendant's violation of Labor Code section  
18 226(a), pursuant to Labor Code section 2698, *et seq.*, the Private Attorney General Act ("PAGA").  
19 To date, the LWDA has not responded to said Notice.

20 34. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any  
21 and all applicable civil penalties for Defendant's violation of Labor Code section 226(a), for the  
22 time period described above, on behalf of himself and other Aggrieved Employees.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this  
25 suit is brought against Defendants, jointly and severally, as follows:

- 26 1. For an order certifying the proposed Classes;  
27 2. For an order appointing Plaintiff as the representative of the Classes as described  
28 herein;



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- 3. For an order appointing Counsel for Plaintiff as Class counsel;
- 4. Upon the First Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code section 226, and for costs and attorneys' fees;
- 5. Upon the Second Cause of Action, for civil penalties pursuant to statute as set forth in California Labor Code section 2699, and for costs and attorney's fees;
- 6. On all causes of action, for attorneys' fees and costs as provided by California Labor Code section 226 and Code of Civil Procedure section 1021.5; and
- 7. For such other and further relief the Court may deem just and proper.

DATED: June 18, 2019

DIVERSITY LAW GROUP, P.C.

By: \_\_\_\_\_  
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