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7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

10  
11 Melissa Keller, individually, and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 Adventist Health System West dba  
16 Adventist Health; Adventist Health  
Employee Medical Plan– Engaged!;  
17 Administrative Committee; Blue Zones,  
18 LLC; and DOES 1 to 10,

19 Defendants.  
20

Case No.

**CLASS ACTION COMPLAINT**  
**DEMAND FOR JURY TRIAL**

1 Plaintiff Melissa Keller, individually, and on behalf of all those similarly  
2 situated, alleges:

3 **INTRODUCTION**

4 1. In early-Covid 2020, Defendant Adventist Health System/West dba  
5 Adventist Health (“AHW”) laid off Plaintiff and thousands of employees.

6 2. Given the pandemic, the Department of Labor (“The DOL”),  
7 extended deadlines to continue coverage under employer-sponsored health plans,  
8 pursuant to the Consolidated Omnibus Budget Reconciliation Act (“COBRA”).  
9 Congress later enacted legislation requiring employers to pay premiums for such  
10 extended coverage under COBRA.

11 3. States with mini-COBRA statutes, including California, adopted  
12 these enhanced protections and rights under COBRA.

13 4. AHW did not comply with COBRA or Cal-COBRA. AHW’s  
14 employee-funded health plan, the Adventist Health Employee Medical Plan –  
15 Engaged! (the “Plan”) likewise declined to comply.

16 5. AHW, the Plan and its administrator, Administrative Committee  
17 (“Administrator”) claim that the Plan is exempt from the Employee Retirement  
18 Income Security Act of 1974 (“ERISA”) and COBRA, as it is a church plan.

19 6. AHW, however, is not maintained by a church. It is a \$5 Billion  
20 enterprise, funded by Medicare and Medicaid, not by the Seventh-day Adventist  
21 Church.

22 7. In 2020, AHW announced its “transformative strategy” to invest \$1B  
23 in the trillion-dollar health and wellness industry. AHW partners with Oprah  
24 Winfrey, Dr. Oz and Miami developers. The \$100M med-spas, mental health apps  
25 and web platforms, the future core of its business, is not affiliated with the  
26 Seventh-day Adventist Church, no matter what their websites claim.

27  
28

1           8.     AHW’s move from low-income hospitals to \$100M “wellness spas”  
2 is legal, but it moves AHW outside ERISA’s church plan exemption

3           9.     Since 2018, AHW has invested up to \$1B in private for-profit  
4 companies and new technologies. This includes start-ups, apps, web platforms.

5           10.    The Plan holds hundreds of millions of dollars in trust, funded by  
6 AHW’s 34,000 employees. The Plan has used plan assets to purchase each  
7 service or technology which AHW has invested in– defraying AHW’s risks and  
8 cost of investment.

9           11.    AHW has at least two other health plans: (1.) the Adventist Health  
10 and Rideout Employee Medical Plan – Engaged! (includes Mendocino) (“Rideout  
11 Plan”); and (2) the Adventist Health Delano Employee Medical Plan – Engaged!  
12 (“Delano”).

13           12.    These plans are subject to ERISA as “non-church plans,” according  
14 to plan documents. Even under ERISA, these plans’ assets have been used to buy  
15 AHW-owned services and technology.

16           13.    This is because AHW and its plans require AHW employees to use  
17 AHW services and technology as a condition of employment, coverage or pre-  
18 authorization under the Plan.

19           14.    With this business model, AHW executives gain undisclosed stock  
20 options, phantom stocks, dividends, pension benefits and bonuses from the for-  
21 profit subsidiaries and investments.

22           15.    These transactions would not be possible under ERISA, which  
23 requires plan assets to be used for the exclusive benefit of participants. These  
24 transactions are prohibited transactions with a party in interest.

25           16.    These transactions are barred as they pose conflicts of interest,  
26 especially if executive compensation flows from the transactions approved by  
27 company executives and Plan fiduciaries.  
28



**THE PARTIES**

24. Plaintiff worked for AHW as a RN Manager.

25. Defendant AHW is a 501(c)(3) non-profit organized under California law.

26. AHW owns and operates “more than 20 hospitals, 250 clinics and 4,500 providers.”<sup>1</sup> And AHW employs 34,000 employees in California, Washington, Oregon and Hawaii.

27. The Plan is an employee benefit plan within the meaning of ERISA section 3(3), 29 U.S.C. § 1002(3), subject to the provisions of Title 1 of ERISA pursuant to ERISA section 4(a), 29 U.S.C. § 1003(a).

28. The Plan is administered by an Administrative Committee, “appointed by the Board of Directors of Adventist Health System/West.”

29. AHW is the employer responsible for maintaining the Plan and is thus the plan sponsor as defined in ERISA section 3(16)(B), 29 U.S.C. § 1002 (16)(B).

**Fiduciaries and Parties in Interest**

30. At all relevant times, AHW was and is the Trustee of the Plan; a fiduciary of the Plan within the meaning of ERISA section 3(21)(A)(i) and (iii), 29 U.S.C. §1002(2)(A)(i) and (iii); and a party in interest to the Plan within the meaning of ERISA sections 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

31. At all relevant times, Blue Zones, LLC, was a party in interest to the Plan within the meaning of ERISA sections 3(14)(B) and (G), 29 U.S.C. § 1002(14)(B) and (G).

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<sup>1</sup> <https://www.adventisthealth.org/>

**FACTS**

**AHW Has Three ERISA Plans**

1  
2  
3 32. The Plan states: “This Plan is ... a church plan” within ERISA  
4 (3)(33). AHW, however, has two “non-church” ERISA health plans.

5 33. Rideout Memorial Hospital dba Adventist Health and Rideout  
6 (“Rideout”) is an AHW hospital. Its nurses are unionized. This plan is “subject to  
7 ERISA.” The Rideout Plan documents includes a COBRA notice, unlike the Plan.

8 34. Likewise, the Delano plan also states that it is subject to ERISA.

9 35. All three plans share an address, website, phone and fax number.

10 36. It appears that all the plans (non-church and church) are administered  
11 by the same fiduciaries and with co-mingled funds.

12 37. AHW has a 401(k) plan, also an ERISA plan. The Adventist Health  
13 401(k) Plan is administered by Adventist Health Retirement Committee (Non-  
14 Church).

15 38. There is no justification for AHW to deem some employees as “non-  
16 church” employees and others as “church” employees. All AHW employees work  
17 at AHW hospitals, which all purportedly follow Seventh-day Adventist Church  
18 traditions. Either the Church Plan exemption applies – or as AHW has conceded,  
19 it does not.

20 **Defendants Are Not Church Plans**

21 39. ERISA originally defined a “church plan” as a plan “established and  
22 maintained ... for its employees ... by a church or by a convention or association  
23 of churches.” ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A).

24 40. Defendant AHW is neither a church, nor a convention or association  
25 of churches.

26 41. AHW expressly states that it is “separately owned and operated”  
27 from the Seventh-day Adventist Church.  
28

1           42.    AHW’s Consolidated Financial Statement states that “the obligations  
2 and liabilities of Adventist Health... are not the obligations or liabilities of the  
3 [Seventh-day Adventist] Church or any of its affiliated organizations.”

4           43.    The Seventh-day Adventist Church does not control or manage  
5 AHW.

6           44.    AHW does not require its patients to be Seventh-day Adventists.

7           45.    Nor does AHW requires employees to be members of the Seventh-  
8 day Adventist Church. In fact, AHW actively recruits doctors who are  
9 “members of other faiths to enhance the health of the [non-Adventist]  
10 communities we serve.”<sup>2</sup>

11          46.    AHW’s executives, who run the day-to-day operations, are not  
12 Seventh-day Adventist Church officials or ministers; many are not members of the  
13 Church. AHW’s CFO is not, and neither is the President of Well-Being.

14          47.    AHW does not pay a tithe or contribute significant monies to the  
15 Seventh-day Adventist Church. The Church does not invest in or fund AHW.

16          48.    Notably, AHW is a publicly-funded healthcare system.

17          49.    AHW’s CEO once estimated that 83% of AHW payors were from  
18 Medicare and Medicaid.

19          50.    The company’s 2018 Consolidated Financial Report discloses that  
20 69% of AHW’s patient accounts receivables are Medicare and Medicaid.

21          51.    AHW aggressively pursues government reimbursements. In 2013,  
22 AHW paid \$14.1M to settle claims that it paid kick-backs to doctors in exchange  
23 for Medicare and Medicaid patient referrals to its hospital, White Memorial. <sup>3</sup>  
24

25  
26           <sup>2</sup> <https://www.adventisthealth.org/provider-careers/about-us/>

27           <sup>3</sup> <https://www.justice.gov/opa/pr/adventist-health-pays-united-states-and-state-california-141-million-resolve-false-claims-act>  
28

1           52. AHW also contracts with private corporations and for-profit  
2 physician groups, to maximize profits without any compunction as to religion or  
3 non-religion.

4           53. In 2018, AHW formed a joint operating company with St. Joseph  
5 Health, a Catholic health system, to operate a group of hospitals in Northern  
6 California. This proposed merger was subsequently blocked by the state Attorney  
7 General as not serving the public interest.

8   AHW's 10-Year Plan

9           54. AHW is a \$5 Billion enterprise, intent on moving from non-profit  
10 hospitals and clinics to venture capital.

11           55. In 2020, AHW ran a PR campaign about its “10-year plan” and  
12 “transformative strategy” to invest \$1B in the trillion-dollar health and wellness  
13 industry.

14           56. Adventist Health CEO Scott Reiner remarked that, “Adventist  
15 Health’s launch of the Well-Being Division is an important part of our 10-year  
16 transformation strategy to move from a healthcare company to a health company.”

17           57. True to its word, AHW has invested up to \$1B in new technologies  
18 and services.

19           58. In February 2020, AHW announced it bought Blue Zones LLC (a  
20 longevity and wellness company) for \$78M. The Plan bought services from Blue  
21 Zones LLC; each AHW employee was required to use them.

22           59. A few months later, AHW announced its investment in Synchronous  
23 Health, Inc. (an AI Technology company) which developed a mental health app  
24 called “Karla”. AHW then deployed Karla on its employees.

25           60. AHW also invested in Sharecare, Inc. This is an Oprah Winfrey/Dr.  
26 Oz startup, once rosily forecast to have a \$4B IPO. Sharecare, a WebMD-type  
27 platform, was reported to have raised \$400M from investors.  
28



1           61. In February 2021, AHW sold AH Vallejo (a 61-bed psychiatric  
2 facility) to for-profit Acadia Healthcare. The sale was for an undisclosed sum.  
3 The California Attorney General imposed conditions on the sale to ensure that  
4 critically underserved children with mental health issues would still be served for  
5 at least ten years in this now for-profit business.

6           62. Shortly thereafter, AHW formed a joint venture to lease and run a  
7 \$100M wellness spa and med-center, within a \$500M luxury skyscraper in Miami  
8 called Legacy Residences<sup>4</sup>. The joint venture hopes to serve wealthy medical  
9 tourists.

10           63. A developer attorney explained the target market for the \$100M med-  
11 spa joint venture to a trade publication, ‘Miami has always had a medical tourism  
12 component where you have rich folks coming from Latin America or anywhere in  
13 the world to enjoy the weather while they’re here getting their annual physical or  
14 getting certain procedures that they’d rather have done in the United States.’  
15 Legacy Residences will cater to those types of travelers as well as other wellness-  
16 focused clients.’<sup>5</sup>

17                           Defendants’ Use of Plan Assets Violates ERISA

18           64. AHW’s move from hospitals to \$100M “wellness spas” is legal, but it  
19 severs AHW from the ambit of the church plan exemption to ERISA.

20           65. The church exemption to ERISA requires the Plan to be maintained  
21 by an organization whose principal purpose is to administer or fund welfare  
22 benefits. ERISA section 3(33)(c)(i), 29 U.S.C. § 1002(3)(33).

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25  
26           <sup>4</sup> <https://rebusinessonline.com/joint-venture-breaks-ground-on-255-room-legacy-hotel-residences-hotel-at-miami-worldcenter/>

27           <sup>5</sup> <https://www.constructiondive.com/news/500m-pandemic-ready-miami-skyscraper-gets-financing/616606/>  
28

1           66. On information and belief, the Plan consists of hundreds of millions  
2 of dollars in trust, funded by AHW's 34,000 employees.

3           67. Here, the principal purpose of the Plan is two-fold. While the Plan  
4 administers claims and benefits, the principal purpose of the Plan under AHW's  
5 10-year plan is as a slush-fund to invest in AHW's services and technology, and to  
6 amass Plan assets for AHW and its executives.

7           68. Plan assets are being used by the Plan and its administrators to  
8 subsidize AHW's investments – and make them profitable, even if the open  
9 market does not and will not do so.

10           69. And the Plan has bought every novel app and platform which AHW  
11 invested in.

12           70. For example, AHW purchased the for-profit Blue Zones, LLC ("Blue  
13 Zones") – a longevity company for \$78M. AHW hired Ben Leedle, Jr.  
14 ("Leedle"), as Blue Zones' CEO. Leedle is also the President of Well-Being at  
15 AHW.

16           71. Leedle explained that AHW rolled out Blue Zones on "every single"  
17 employee of AHW. "The Well-Being Division felt it was important to start at  
18 home and launched Blue Zones at Adventist Health to... invest in the workforce  
19 of 30,000 employees." And "The [Blue Zones] team spent time ... to partner with  
20 each associate."

21           72. AHW thus forced Plan participants to pay for and use its new  
22 investment technology and services - a prohibited transaction and self-dealing.

23           73. AHW spun this as beneficial. Leedle said, "We drew a bold line in  
24 the sand that said... it [Blue Zones coaching] has to start with us and our  
25 associates."

26           74. The Plan also uses the "Karla" mental-health bot "that lives in your  
27 pocket or purse," sold by AHW investment, Synchronous Health, Inc.  
28

1           75. The Plan documents encourage “covered dependents” (children and  
2 partners) to use AHW’s services and technology.

3           76. Both plans require prior authorization. It “is mandatory for all Plan  
4 enrollees.” The plans’ documents states:

5           **If you do not follow the *prior* authorization procedures set forth in the**  
6           **Care Management, Health Coaching and Utilization Management**  
7           **Prior Authorization Program section of the *Plan*, no benefits will be**  
8           **provided (except in the case of *emergency services*).**

9           77. With this business model, AHW executives can earn stock options,  
10 phantom stocks, dividends, pension benefits and bonuses from AHW’s private  
11 investments - without public disclosure or oversight.

12           78. These transactions are barred under ERISA. They are prohibited  
13 transactions with a party in interest.

14           79. They are prohibited because they pose conflicts of interest,  
15 particularly when executive compensation is structured within these transactions.

16           80. These transactions are a modern-day company store, with workers  
17 using their wages to pay their employer for employer-provided goods.

18           81. Executive compensation is one reason why AHW is using plan assets  
19 to benefit AHW and its affiliates. The fact that any compensation would remain  
20 undisclosed is more significant.

21           82. Even with the IRS’s Form 990s, which force non-profits to disclose  
22 executive compensation, in 2019, AHW was bold. It approved \$30M in executive  
23 pay.

24           83. Although AHW has an 80% Medicare and Medical payor-based  
25 business, AHW executives paid themselves higher annual compensation  
26 (\$4,448,122) (\$2,777,038) (\$2,528,851) than the CEOs of Cedars-Sinai, The  
27 Mayo Clinic, or the President of Yale.  
28

1           84. In 2019, ten AHW executives earned between 1.1M to 4.4M, while  
2 fifteen AHW executives earned \$700k to \$990k.

3           85. Before it was terminated in 2016, AHW's raft of home-grown  
4 executives set up a "top hat" SERP retirement plan to incentivize themselves to  
5 stay put and keep earning millions of dollars each year.

6           86. The plan required employer contributions equal to 60% of their  
7 annual salary for covered executives.

8           87. AHW's 2019 Form 990 disclosed that the SERP was closed to new  
9 members in 2016. Several executives retired or had their positions eliminated in  
10 2018 and 2019. One year later, AHW's "10-year transformative plan" to venture  
11 capital was announced, and \$1B in investments earmarked to go private.

12           88. Simply put, the Plan is not a church plan, given the new business  
13 model of AHW, its business partner and investments, and its transfer of millions  
14 of dollars of Plan assets to subsidize AHW's untested products and services.

15           89. This 10-year plan tangibly benefits AHW and its officers and  
16 directors, who are fiduciaries and plan administrators, but it remains to be seen  
17 whether it benefits participants, who are being forced to utilize these technologies  
18 and services and forced to crowd-fund them to boot.

19                           Defendants Violated COBRA and Cal-COBRA

20           90. AHW's 34,000 employees work, in part, to secure health insurance  
21 for their families through the Plan. Employees co-fund the Plan through premium  
22 payments, deductibles and co-pays.

23           91. In early-Covid 2020, Defendant AHW laid off thousands of  
24 employees, as well as Plaintiff.

25           92. Shortly after job loss, on July 31, 2020, AHW severed Plaintiff's  
26 health insurance under the Plan.

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1           93.    Given mass layoffs, which meant families were facing a serious  
2 infectious disease without insurance, the DOL extended relief in 2020. It gave  
3 laid-off workers and their families more time to say yes to continuing insurance  
4 coverage under their employer sponsored plan - from 60 days to one year. This is  
5 under COBRA.

6           94.    Plaintiff had one year to secure coverage, but she did not know that.  
7 She did not elect continued coverage, neither did her family. Consequently,  
8 Plaintiff was uncovered and had no insurance during a global pandemic when  
9 Covid vaccines were not yet available. Plaintiff suffered anxiety and fear, due to  
10 her lack of health insurance and Defendants' failures to comply with COBRA.

11           95.    In 2021, Congress passed The American Rescue Plan Act  
12 ("American Rescue Plan"). Employers were required to pay COBRA premiums  
13 for participants who were terminated (or whose work-hours were cut) between  
14 November 1, 2019 and August 31, 2021.

15           96.    The American Rescue Plan also gave employees a second bite at the  
16 apple. Laid-off workers and their families had more time to say yes to sign up for  
17 COBRA coverage, even if they had not done so before.

18           97.    AHW and Plan Defendant did not give Plaintiff or any former  
19 employees and their families notices of their rights under the American Rescue  
20 Plan.

21           98.    AHW and Plan Defendant did not give Plaintiff or any former  
22 participants notice of their rights under Cal-COBRA, which adopted the American  
23 Rescue Plan.

24           99.    AHW, Plan Defendant and Administrator have claimed that the Plan  
25 is exempt from ERISA and COBRA, because it is a church plan.

26           100. Defendants, however, also ignored Cal-COBRA, which does not  
27 exempt church plans.  
28

1           101. Plaintiff, who lives and works in California, did not get notice about  
2 her enhanced rights to coverage. Neither did thousands of former AHW's  
3 California employees.

4           102. The American Rescue Plan gave employers a tax credit on federal  
5 taxes for doing their part. But AHW is exempt from federal taxation. So, AHW  
6 had nothing to gain from complying with ERISA or Cal-COBRA. Covering  
7 former employees' insurance coverage would be benevolent.

8           103. But AHW is not a charitable hospital in the traditional or "church  
9 plan" sense. It is a health and wellness investor and a healthcare system.  
10 Defendants intentionally deprived Plan participants of COBRA notices and rights  
11 to insurance coverage and peace of mind thereunder, on the plainly erroneous  
12 assumption that the Plan is a church plan, exempt from ERISA compliance.

13           104. Many church plans have sought an advisory opinion from ERISA as  
14 to whether their plans qualify under the Church Plan exemption. Many former  
15 church plans have opted to comply with ERISA.

16           105. AHW and the Plan have never sought an advisory opinion from  
17 ERISA about whether it qualifies as a church plan, because AHW and Plan  
18 fiduciaries know that the Plan is not a *bona fide* church plan.

19           106. Moreover, AHW carved out two hospitals and one 401(k) fund as by  
20 separate ERISA-governed plans because it knows the church-plan exemption is  
21 inapt.

22           107. AHW's plan are all covered by ERISA. Defendants failed to give  
23 required COBRA notices and breached their fiduciary duties by using Plan assets  
24 to benefit parties in interest.

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**CLASS ACTION ALLEGATIONS**

1  
2 108. Plaintiff brings this class action pursuant to Rule 23 of the Federal  
3 Rules of Civil Procedure on behalf of herself and the following class of similarly  
4 situated persons:

5  
6 All participants and beneficiaries in the Adventist Health Employee  
7 Medical Plan -Engaged! who did not receive adequate notice from  
8 Defendants about their enhanced rights under COBRA, within the statute of  
9 limitations, and thus did not elect coverage.

10  
11 All participants and beneficiaries in the Adventist Health Employee  
12 Medical Plan -Engaged! who did not receive adequate notice from  
13 Defendants as to their enhanced rights under Cal-COBRA, within the  
14 statute of limitations, and thus did not elect coverage.

15  
16 All participants and beneficiaries in the Adventist Health Employee  
17 Medical Plan -Engaged! whose assets were used by or transferred to Plan  
18 fiduciaries for their personal interest, or whose assets were not used for the  
19 exclusive benefit of participants and beneficiaries.

20  
21 All participants and beneficiaries in the Adventist Health Employee  
22 Medical Plan- Engaged! who were damaged by the Plan’s prohibited  
23 transactions with service providers and affiliates of AHW.

24 Numerosity

25 109. Plaintiff is not aware of the precise number of Class members, but  
26 this information is readily ascertainable from AHW records. AHW employs  
27  
28

1 34,000 employees and the Plan has 30,000 or more participants. For this reason,  
2 joinder of all Class members is impracticable.

3 Typicality

4 110. Plaintiff's claims are typical of the Class as their claims arise from the  
5 same event and transactions, i.e., AHW and the Plan's failure to give Covid-related  
6 COBRA notices and rights. Plaintiff's claims as to the use of plan assets for self-  
7 dealing and prohibited transactions are typical of the Class, as well.

8 Adequacy

9 111. Plaintiff will fairly and adequately protect the interests of the Class  
10 members. Defendants have no unique defenses against Plaintiff which would  
11 interfere with her representation of the Class, and Plaintiff has no interest  
12 antagonistic to the class. She has retained counsel experienced in complex class  
13 action litigation and with ERISA class actions.

14 Commonality

15 112. Common questions of law and fact exist as to all members of the  
16 Class and predominate over any questions solely affecting individual members of  
17 the Class, including but not limited to:

- 18 a. Whether the Plan is covered by ERISA;  
19 b. Whether the Plan is a church plan;  
20 c. Whether Defendants violated ERISA by failing to file form 5500s.  
21 d. Whether the Plan is a group health plan within the meaning of 29  
22 U.S.C. § 1167(1);  
23 e. Whether Defendants' notice complied with the requirements of 29  
24 U.S.C. 1166(a) and 29 C.F.R. § 2590.606-4;  
25 f. Whether statutory penalties should be imposed against Defendant  
26 under 29 U.S.C. 1132(c)(1) for failing to comply with COBRA notice  
27 requirements, and if so, in what amount;  
28



1 g. Whether Defendants violated ERISA by failing to use plan assets for  
2 the exclusive benefit of participants and beneficiaries, and if so, what damages are  
3 owed to the Plan and its participants and beneficiaries for such violations; and

4 h. Whether Defendants violated ERISA by engaging in prohibited  
5 transactions by using or transferring plan assets in transactions with parties in  
6 interest (plan sponsor, service providers, officers and directors).

7 113. Class members do not have an interest in pursuing separate individual  
8 actions against Defendant, as the amount of each Class Member's individual claim  
9 is modest as compared to the cost of individual actions.

10 114. Class certification will also bar unduly duplicative litigation which  
11 may result in inconsistent judgments as to Defendants' defenses and class claims.

12 115. Plaintiff will send notice to all Class Members. The names and  
13 addresses of the Class Members are available from Defendant's records.

14 **FIRST CLAIM FOR RELIEF**

15 **(Violation of 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4, Enforced Through**  
16 **29 U.S.C. § 1132)**

17 116. Paragraphs 1 through 115 above are realleged and incorporated  
18 herein by reference.

19 117. The Plan is a group health plan within the meaning of 29 U.S.C. §  
20 1167(1).

21 118. Plaintiff and the other members of the Class experienced a  
22 "qualifying event" as defined by 29 U.S.C. § 1163.

23 119. AHW as the employer of members of the Class knew of the qualifyin  
24 event and sent Plaintiff and some but not all Class Members a brochure under Cal-  
25 COBRA.

26 120. The COBRA notice that Defendant sent to Plaintiff and other Class  
27 Members violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4 for the reasons  
28

1 set forth above, for which Plaintiff brings this civil action under the authority  
2 found in 29 U.S.C. § 1132.

3 121. These violations were material and willful.

4 **SECOND CLAIM FOR RELIEF**

5 **(Claim for Equitable Relief Pursuant to ERISA Section 502(A)(3) Against**  
6 **Defendants)**

7 122. Paragraphs 1 through 121 above are realleged and incorporated  
8 herein by reference.

9 123. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a  
10 participant or beneficiary to bring a civil action to obtain “appropriate equitable  
11 relief . . . to enforce any provisions of this title.” Pursuant to this provision, and 28  
12 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks  
13 declaratory relief that the Plan is not a Church Plan within the meaning of ERISA  
14 section 3(33), 29 U.S.C. § 1002(33), and thus is subject to the provisions of  
15 ERISA.

16 124. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), also authorizes a  
17 participant or beneficiary to bring a civil action to “(A) to enjoin any act or  
18 practice which violates any provision of this title or the terms of the plan, or (B) to  
19 obtain other appropriate equitable relief (i) to redress such violations or (ii) to  
20 enforce any provisions of this subchapter or the terms of the plan.”

21 125. Pursuant to these provisions, Plaintiff seeks orders directing  
22 Defendants to bring the Plan into compliance with ERISA.

23 126. ERISA section 502(a)(2), 29 U.S.C. § 1132(2), authorizes a  
24 participant or beneficiary to bring a civil action for appropriate relief under 29  
25 U.S.C. § 1109(a), against a fiduciary “who breaches any of the responsibilities,  
26 obligations, or duties imposed upon fiduciaries” and the fiduciary “shall be  
27 personally liable to make good to such plan any losses to the plan resulting from  
28

1 each such breach, and to restore to such plan any profits of such fiduciary which  
2 have been made through use of assets of the plan by the fiduciary, and shall be  
3 subject to such other equitable or remedial relief as the court may deem  
4 appropriate.” ERISA § 409(a), 29 U.S.C. § 1109(a).

5 127. Because the operation of the Plan as a non-ERISA Plan was a breach  
6 of Defendants’ fiduciary duties, Defendants breached their fiduciary duties and  
7 Plaintiffs also seek Plan-wide equitable and remedial relief under ERISA section  
8 502(a)(2).

9 128. As the Plan is not a church plan within the meaning of ERISA section  
10 3(33), 29 U.S.C. § 1002(33), and meets the definition of a health plan under  
11 ERISA, the Plan should be declared to be an ERISA-covered health plan, and  
12 Defendants should be ordered to bring the Plan into compliance with ERISA,  
13 including by remedying the violations set forth herein.

14 **THIRD CLAIM FOR RELIEF**

15 **(Claim for Violation of ERISA’s Mandatory Reporting and Disclosure**  
16 **Provisions Against Defendant AHW, or in the alternative, the Committee**  
17 **Defendant)**

18 129. Paragraphs 1 through 128 above are realleged and incorporated  
19 herein by reference.

20 130. Since the Plan’s inception, Defendants have failed to provide Plaintiff  
21 or any member of the Class with a Summary Plan Description with respect to the  
22 Plan that meets the requirements of ERISA section 102, 29 U.S.C. § 1022.

23 131. Because Defendants have been the Plan Administrator of the Plan at  
24 all relevant times, it violated ERISA section 104, 29 U.S.C. § 1024, by failing to  
25 provide Plaintiff and members of the Class with adequate Summary Plan  
26 Descriptions.

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1 132. Defendants also, at all relevant times, violated ERISA section 104(a),  
2 29 U.S.C. § 1024(a), by failing to file annual reports with the Secretary of Labor  
3 in compliance with ERISA section 103, 29 U.S.C. § 1023, or Form 5500s that the  
4 Secretary has approved as an alternate method of compliance with ERISA section  
5 103, 29 U.S.C. § 1023.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Disloyal Imprudent and Prohibited Transactions Between the Plan and Plan**  
8 **Service Providers and Plan Fiduciaries Blue Zone and AHW)**

9 133. Paragraphs 1 through 132 above are realleged and incorporated  
10 herein by reference.

11 134. ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1) requires plan  
12 fiduciaries to act “solely in the interest” of plan participants and beneficiaries.

13 135. The fiduciary must act for the “exclusive purpose” of providing  
14 benefits to plan participants. 29 U.S.C. §1104(a)(1)(A).

15 136. The fiduciary has a duty of prudence to act with the “care, skill,  
16 prudence and diligence under the circumstances then prevailing that a prudent  
17 man acting in a like capacity and familiar with such matters would use in the  
18 conduct of an enterprise of a like character and with like aims.” 29 U.S.C.  
19 §1004(a)(1)(B).

20 137. ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D) prohibits  
21 fiduciaries from causing plans to engage in transactions that they know or should  
22 know constitute direct or indirect transfers of the Plans’ assets to, or use of the  
23 Plans’ assets by or for the benefit of, parties in interest.

24 138. ERISA section 406(b), 29 U.S.C. § 1106(b) prohibits fiduciary self-  
25 dealing. A fiduciary shall not “deal with the assets of the plan in his own interest  
26 or for his own account.” 29 U.S.C. § 1106(b)(1).

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1 139. Nor shall a fiduciary “act in any transaction involving the plan on  
2 behalf of a party whose interests are adverse to the interests of the plan or the  
3 interests of its participants or beneficiaries.” 29 U.S.C. § 1106(b)(2).

4 140. A fiduciary shall not “receive any consideration for his own personal  
5 account from any party dealing with such plan in connection with a transaction  
6 involving the assets of the plan.” 29 U.S.C. § 1106(b)(3).

7 141. At all relevant times, AHW’s executives and service providers had a  
8 conflict of interest. They stood to profit from the Plan’s purchase and/or use of  
9 AHW’s products and services. These include Blue Zones, LLC; Sharecare, Inc.;  
10 and Synchronous Health, Inc.

11 142. AHW’s executives and Plan fiduciaries used Plan assets to purchase  
12 products and services, which AHW and its affiliates had financial interests in and  
13 would personally benefit from.

14 143. AHW executives and Plan fiduciaries then drafted Plan documents  
15 requiring participants and beneficiaries to use its investments as a condition of  
16 employment, coverage, or pre-authorization for health benefits.

17 144. AHW and Plan fiduciaries administered the plan and its claims and  
18 benefits to force participants and beneficiaries to purchase or use products and  
19 services which AHW and its executives have a financial interest in promoting or  
20 selling.

21 145. On information and belief, these transactions were not for fair market  
22 value. And the primary purpose of these transactions was to transfer plan assets to  
23 AHW and others to benefit these parties in interest. The primary purpose of these  
24 transactions was not for the exclusive benefit of participants and beneficiaries.

25 146. By causing the Plan to engage in these transactions, in which a  
26 fiduciary to the Plan dealt with the plan assets in his own interest, Defendants  
27 violated ERISA.  
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1 147. As a direct and proximate result of these breaches of fiduciary duty,  
2 the Plan and its participants have suffered losses for which Defendants are jointly  
3 and severally liable pursuant to ERISA section 409, 29 U.S.C. § 1109; ERISA  
4 section 502(a)(2), 29 U.S.C. § 1132(a)(2); and ERISA section 502(a)(5), 29  
5 U.S.C. § 1132(a)(5).

6 **FIFTH CLAIM FOR RELIEF**

7 **(Co-Fiduciary Liability)**

8 148. Paragraphs 1 through 147 above are realleged and incorporated  
9 herein by reference.

10 149. Pursuant to ERISA sections 405(a)(1),(2) and (3), 29 U.S.C.  
11 1105(a)(1),(2) and (3), each DOE Defendant, as a named or de facto fiduciary,  
12 knew of, knowingly participated in, and enabled the breaches of fiduciary duty  
13 committed by each of the other fiduciaries set forth above.

14 **SIXTH CLAIM FOR RELIEF**

15 **Breach of Common Law Fiduciary Duty Against Defendants Herein**

16 150. Paragraphs 1 through 149 above are realleged and incorporated  
17 herein by reference.

18 151. The Plan assets are held in trust. Plaintiff and other Class members  
19 are beneficiaries of the trust.

20 152. AHW, the Plan and Administrator (and named fiduciaries) owed  
21 Plaintiff and Class members a duty of undivided loyalty to exclusively benefit  
22 participants and beneficiaries.

23 153. By using and transferring plan assets for their personal gain, and by  
24 coercing participants to use AHW's products and services, Defendants breached  
25 their fiduciary duties of loyalty and prudence.

26 154. Plaintiffs seek monetary damages and injunctive relief accordingly.  
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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for relief as follows:

- a. Designating Plaintiff’s counsel as counsel for the Class;
- b. Issuing proper notice to the Class at Defendants’ expense;
- c. Entering a Declaratory Judgement declaring that the AHW Health Plan as an ERISA-covered health plan, and Defendants should be ordered to bring the Plan into compliance with ERISA, including by remedying the violations set forth above;
- d. Declaring that the COBRA notice sent by Defendant to Plaintiff and other Class Members violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4;
- e. Awarding appropriate equitable relief pursuant to 29 U.S.C. § 1132(a)(3), including but not limited to an order enjoining Defendant from continuing to use its deficient COBRA notice and requiring Defendant to send corrective notices;
- f. Awarding statutory penalties to the Class pursuant to 29 U.S.C. § 1132(c)(1) and 29 C.F.R. § 2575.502c-1 in the amount of \$110.00 per day for each Class Member who was sent a defective COBRA notice by Defendant;
- g. Alternatively, nominal damages should be awarded;
- h. Awarding attorneys’ fees, costs and expenses to Plaintiff’s counsel as provided by 29 U.S.C. § 1132(g)(1) and other applicable law;
- i. Appointing an independent fiduciary to approve and monitor the selection and compensation of service providers to the Plan; and
- j. Granting such other and further relief, in law or equity, as this Court deems appropriate.

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**JURY DEMAND**

Plaintiff demands a trial by jury on all triable issues.

Dated: May 26, 2022

Respectfully submitted,

PARK APC

By:   
Sook Won  
Attorneys for Plaintiff, Melissa Keller