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Attorney for Plaintiff SHAWN BUTLER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

SHAWN BUTLER, individually and
on behalf of all others similarly
situated, as an aggrieved former
employee on behalf of himself and
other aggrieved employees, brought in
the name of the People of the State of
California and the Labor
Commissioner,

Plaintiff,

vs.

THE CLAREMONT COLLEGES,
INC. (TCC) also known as THE
CLAREMONT COLLEGES
SERVICES (TCCS) formerly known
as CLAREMONT UNIVERSITY
CONSORTIUM (CUC) AND DOES
1-10

Defendants.

Case No.: 20STCV34934

CLASS ACTION

Assigned for all purposes to Judge Elihu M. Berle

**FIFTH AMENDED COMPLAINT FOR
CLASS ACTION CLAIMS:**

1. Failure to provide accurate written itemized wage statements (Lab. Code § 226(a));
2. Failure to pay minimum and overtime wages (§§ 204, 223, 510, 511, 1194, 1194.2, 1197, 1198 & IWC Order 4-2001, §§ 3-5 and § 20);
3. Wages pursuant to Lab. Code § 558;
4. Failure to provide uninterrupted meal periods (Lab. Code § 226.7(b) & (c) and § 512);
5. Failure to provide uninterrupted rest breaks per Lab. Code § 226.7 & IWC Order 4-2001, § 12;
6. Failure to pay wages upon separation per Lab. Code § 201 (discharge) and/or § 202 (quit) and waiting time penalties per Lab. Code § 203;
7. Unfair Competition: B & P Code § 17200 et. seq

REPRESENTATIVE CLAIMS:

8. Private Attorney General Act (PAGA) penalties (Lab. Code §§ 2698-2699.5);

AND INDIVIDUAL CLAIM(S):

9. Failure to timely afford inspection of records (§ 226(b), (c), & (f) and 1198.5);

Seeking damages for the enumerated claims as follows:

10. Civil and Statutory Penalties;
11. Injunctive Relief;
12. Pre and Post Judgment Interest (§ 218.6); and
13. Costs & Attorney's Fees (CCP § 1021.5; Lab. Code §§ 218.5, 226(e)(1), 226(h), 1194, 1198.5(l), 2699(g), 2802(c), and other applicable statute(s).

JURY TRIAL DEMANDED FOR LEGAL CLAIMS

1 Plaintiff Shawn Butler (MR. BUTLER or Plaintiff), on behalf of (a) himself, (b) all others
2 similarly situated, and (c) other aggrieved employees, alleges and complains based upon his own
3 knowledge and acts—unless specifically stated based on information and belief—the following against
4 Defendants The Claremont Colleges, Inc. (TCC) a.k.a The Claremont Colleges Services (TCCS) f.k.a.
5 Claremont University Consortium (CUC), hereinafter collectively referred to as TCC; and DOE
6 Defendants 1-10 (DOES), all of whom are hereinafter collectively referred to as DEFENDANTS:

7 **INTRODUCTION**

8 1. This action arises out of DEFENDANTS' numerous violations of California's Labor and
9 Business and Professions Codes, including but not limited to the following: (1) TCC failed to pay
10 former and current employees all of the wages owed to them due to TCC's failures to (a) properly
11 classify employees with the job title Sergeant as non-exempt employees because these employees do not
12 meet the duty test(s) for any exemption and also, on information and belief, may not meet the salary test
13 for exemption; (b) accurately and completely account and pay for all of the time non-exempt employees
14 worked, including non-exempt employees who were /are Campus Safety Officers, Corporals and
15 misclassified Sergeants who worked off-the-clock donning and doffing TCC-required uniforms and gear
16 per TCC's Campus Safety Department's uniform policy, procedure, and/or practice; and (c) on
17 information and belief, because TCC utilized/s a corporation-wide unlawful rounding system for all of
18 its employees TCC classified as non-exempt; (2) TCC failed to pay premium pay to employees who did
19 not have a legitimate opportunity to take Labor Code compliant meal and/or rest breaks because, due to
20 TCC's Campus Safety Department's uniform policy, procedure and/or practice, these employees meal
21 and/or rest break(s) were interrupted, missed, or untimely due to, for example, being on call through a
22 radio on their persons that had to be kept turned on and monitored, and to which TCC expected these
23 employees to respond to during their shift regardless of meal and/or rest breaks as such was/is the case
24 for TCC's Campus Safety Officers, Corporals, Sergeants, and Dispatchers; (3) TCC failed to provide
25 current and former employees with Labor Code section 226 compliant accurate itemized wage
26 statements causing them injury, including but not limited to on a corporation-wide basis failing to list
27 TCC (not TCCS) as the name of the legal entity that is the employer; (4) TCC, in willfully failing to
28 timely pay all wages when due, also failed to pay separated employees waiting time penalties; (5) TCC
failed to reimburse TCC's employees, including Campus Safety Department employees, for all
necessary business expenses; and (6) due to these violations, TCC failed to fairly compete under
California's Business and Professions Code and should be enjoined from violating Cal. Labor Code.

2. Given the numerous violations of California's applicable statutes, regulations, and/or orders

1 alleged within this operative complaint, TCC is liable for unpaid minimum, regular, overtime, possibly
2 double time, sick pay, vacation pay, and premium wages; liquidated damages; unreimbursed necessary
3 business expenses; statutory penalties; restitution; costs of suit; interest; and attorney(s)' fees.

4 3. TCC is also liable for civil penalties under California's Private Attorney General Act of 2004
5 (PAGA), Labor Code § 2698 to § 2699.6.

6 4. MR. BUTLER seeks, on both a class and representative action basis, to recover unpaid
7 minimum, regular, overtime, possibly double time, and premium wages; liquidated damages; treble
8 damages in the future if applicable; reimbursement; restitution; civil and statutory penalties; costs of
9 suit; attorney(s)'s fees; and pre and post judgment interest to which MR. BUTLER, the Class as defined
10 below, and Aggrieved PAGA Employees are entitled to recover under California law.

11 JURISDICTION & VENUE

12 5. Pursuant to California Code of Civil Procedure (CCP) § 395(a), the superior court in the county
13 where the defendants or some of them reside at the commencement of the action is the proper court for
14 the trial of the action.

15 6. At the commencement of and at all relevant dates relating to this action, TCC conducted/s
16 business in the city of Claremont located in Los Angeles County, California.

17 7. DOE Defendants are directors, officers, and/or other managing agents who worked or currently
18 work for TCC. MR. BUTLER believes DOE Defendants are situated or reside within Los Angeles
19 County in the State of California.

20 8. MR. BUTLER worked for TCC for over four years and ended his employment with TCC on
21 July 29, 2019. MR. BUTLER, at all relevant times, was and still is a resident of California living outside
22 of Los Angeles County within California.

23 9. Class members, including MR. BUTLER, performed work in Los Angeles County, and
24 DEFENDANTS' legal obligations to class members under California law arose and were violated in the
25 County of Los Angeles.

26 10. Aggrieved PAGA Employees, including MR. BUTLER, performed work in Los Angeles
27 County, and DEFENDANTS' legal obligations to Aggrieved PAGA Employees under California law
28 arose and were violated in the same county.

11. There is no federal question at issue as the claims herein are based solely on California law.

12. Also, there is no diversity of citizenship amongst the Parties because DEFENDANTS are either
incorporated or reside in California.

13. Thus, jurisdiction and venue are proper in Superior Court of California, County of Los Angeles.

PARTIES

14. *Plaintiff*, MR. BUTLER, worked as a non-exempt employee for TCC for over four years up to and including a shift that ended after 6:00 am on July 29, 2019. MR. BUTLER initially worked as a Campus Safety Officer with his final title as Corporal Campus Safety Officer. MR. BUTLER also performed the duties of a Dispatcher when staff needs required such. MR. BUTLER wrote reports and/or reviewed subordinates, at times after his shift ended, similar to Sergeants. MR. BUTLER applied for the position of Sergeant in 2018 because he is/was qualified to perform that job, but TCC did not promote MR. BUTLER.

15. With respect to class action claims, MR. BUTLER is a member of the class who shares common legal rights with other class members and suffered common injuries caused by TCC's unlawful uniform policies, procedures, and/or practices created, implemented, and/or maintained by TCC's Human Resources Department, TCC's Campus Safety Department, and/or TCC's upper-level leadership. MR. BUTLER seeks to be the class representative for the Class including for the following six subclasses defined within the operative complaint: Non-Exempt Employees Wages Class, Premium Pay Class, Wage Statement Class, Former Employees Class, Reimbursement-Owed Class, and Restitution Class (collectively the "Class"). MR. BUTLER has the requisite standing to represent this group of individual employees, all of whom have causes of action similar to his own against TCC.

16. The members of the Class are identifiable, similarly situated persons who presently work or formerly worked either as non-exempt employees or non-exempt employees misclassified as exempt employees for TCC, including but not necessarily limited to Campus Safety Officers, Campus Safety Corporals, Campus Safety Sergeants, and Dispatchers. The Class also includes all employees TCC subjected to its unlawful rounding policy, procedure, and/or practice, as well as all TCC employees for whom TCC failed to provide Labor Code section 226 complaint wage statements.

17. With respect to PAGA claims, MR. BUTLER, acting as proxy for the State of California, seeks relief on behalf of himself and other current or former employees aggrieved by TCC's numerous violations of California's Labor Code ("Aggrieved PAGA Employees").

18. Per Labor Code § 2699(c), Aggrieved PAGA Employees are any person who was/is employed by TCC and against whom one or more of the alleged violations was committed. As explained within this operative complaint, MR. BUTLER is an aggrieved employee under PAGA. Other Aggrieved PAGA Employees include current and/or former employees with the following *non-exhaustive* list of job title(s): (1) Campus Safety Officer, Campus Safety Corporal, and Campus Safety Dispatchers, as well as those employees TCC misclassified as salary exempt including but not necessarily limited to

1 Campus Safety Sergeants because these salaried employees did/do not (1) customarily and regularly
2 exercise discretion and independent judgment; and (2) were/are not primarily engaged in duties which
3 meet the test of any exemption. Aggrieved PAGA Employees also includes all employees TCC
4 subjected to its unlawful rounding policy, procedure, and/or practice, as well as all TCC employees TCC
5 failed to provide Labor Code section 226 complaint wage statements.

6 19. *Defendant The Claremont Colleges (“TCC”)*: According to its most recent Statement of
7 Information filed with California’s Secretary of State, TCC is a nonprofit corporation doing business in
8 the State of California with its principal business office located at 101 South Mills Avenue, Claremont,
9 CA 91711. TCC is known as The Claremont Colleges Services (TCCS), though such fictitious business
10 name remains unregistered. TCC is formerly known as Claremont University Consortium (CUC). TCC
11 refers to the five undergraduate colleges—Pomona, Scripps, Claremont McKenna, Harvey Mudd and
12 Pitzer—and its two graduate institutions, Claremont Graduate University and Keck Graduate Institute.

13 20. *DOE Defendant(s)*: Pursuant to Labor Code § 558.1, DOE Defendants are any other person
14 acting on behalf of TCC, who violates, or causes to be violated, any provision regulating minimum
15 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or
16 causes to be violated, Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802. The true names and
17 capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendant(s)
18 DOES 1 through 10, inclusive, are presently unknown to MR. BUTLER, who therefore sues these
19 Defendants by such fictitious names pursuant to CCP § 474. MR. BUTLER will seek leave to amend the
20 Complaint to allege the true names and capacities of DOE Defendants if/when they are actually
21 ascertained and confirmed they caused to be violated §§ 203, 226, 226.7, 1193.6, 1194, or 2802. On
22 information and belief, as detailed below, at this time Stig Lanesskog and Devin Romanio remain
23 possible DOE Defendants because whether they actually caused to be violated Labor Code §§ 203, 226,
24 226.7, 1193.6, 1194, or 2802 is truly unknown to MR. BUTLER at this time.

25 21. According to TCC’s most recent Statement of Information filed with California’s Secretary of
26 State, Stig Lanesskog is TCC’s Chief Executive Officer (CEO)/President and Agent for Service of
27 Process. According to TCC’s website, “Stig Lanesskog, the Chief Executive Officer of TCCS oversees a
28 staff of over 400 that provides innovative, high quality and cost effective customer-oriented services that
integrate fully with the missions of the institutions served by TCCS. Mr. Lanesskog is assisted by a
nine-member Senior Cabinet which provides additional insight and leadership on key issues.” Legal
compliance is, or at least should be, considered a key issue. Mr. Lanesskog exercises substantial
independent authority and judgment in his corporate decision making so that his decisions ultimately

1 determine corporate policy. In overseeing TCC staff, Mr. Lanesskog actively participates in TCC's
2 management or otherwise acts on TCC's behalf. According to a Fall 2014 email from Mr. Lanesskog to
3 The Student Life, the newspaper for TCC, "Mr. Lanesskog wrote that he is responsible for 'the effective
4 management of staffing and monetary resources' for these services, which are funded by the colleges.
5 Mr. Lanesskog also wrote, "Collaboration and communication among CUC and the campuses is
6 critical,"... "For the short-term, I am learning as much as possible about CUC and the colleges. For the
7 long-term, I will be working on changes at Campus Safety and on the implementation of a new financial
8 system for all the colleges. For the broader set of services, we will be focusing on assessment and how
9 their service offerings relate to and support the campus communities." According to former Scripps
10 College President, Lori Bettison-Varga, one of Mr. Lanesskog's greatest strengths is his experience with
11 "organizational structures and efficiencies" and "helping to put in place processes and systems that will
12 help advance the work of an office or of a group." On information and belief, Mr. Lanesskog was made
13 aware of TCC's unlawful rounding time practice due to a prior class action lawsuit filed against TCC by
14 Gregory Leach, a former TCC employee who sued TCC in 2017. On information and belief, Mr.
15 Lanesskog also knows or should have known about TCC's other violations of California's Labor Code
16 due to his leadership position with access to information from TCC's human resources department
17 and/or TCC's attorney(s) because, on information and belief, TCC implemented certain subsequent
18 remedial measures during or following Mr. Leach's lawsuit. Mr. Lanesskog had the actual or
19 constructive knowledge, title, and power to delegate remedying TCC's Labor Code violations and to
20 mandate TCC become Labor Code complaint, however Mr. Lanesskog failed to act despite having a
21 fiduciary duty as CEO to act in TCC's best interest which includes complying with California's Labor
22 Code. At this time, MR. BUTLER does not know, but believes Mr. Lanesskog's failure to act caused to
23 be violated wage and hours laws, including certain Labor Code sections enumerated in Labor Code §
24 558.1. Thus, Mr. Lanesskog's leadership or lack thereof could have jointly caused the damages claimed
25 of in this operative complaint. Therefore, on information and belief, as an officer of TCC, Mr.
26 Lanesskog may be personally liable under Labor Code § 558(a) and/or § 558.1. Under § 558(a), "Any
27 employer or other person acting on behalf of an employer who violates, or causes to be violated, a
28 section of this chapter or any provision regulating hours and days of work in any order of the Industrial
Welfare Commission shall be subject to a civil penalty...", while under § 558.1, "(a) Any employer or
other person acting on behalf of an employer, who violates, or causes to be violated, any provision
regulating minimum wages or hours and days of work in any order of the Industrial Welfare
Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may

1 be held liable as the employer for such violation. (b) For purposes of this section, the term “other person
2 acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or
3 managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision
4 (b) of Section 3294 of the Civil Code.

5 22. Devin Romanio, TCC’s HR Business Partner, may be a managing agent of TCC and thus also
6 may be personally liable under Labor Code § 558.1, though actual knowledge of such is unknown to MR.
7 BUTLER at this time. “The determination whether employees act in a managerial capacity...does not
8 necessarily hinge on their “level” in the corporate hierarchy. Rather, the critical inquiry is the degree
9 of discretion the employees possess in making decisions that will ultimately determine corporate
10 policy.” *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 822-823. “[T]he term “managing
11 agent” include[s] only those corporate employees who exercise substantial independent authority and
12 judgment in their incorporate decisionmaking so that their decisions ultimately determine corporate
13 policy.” *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 576-577. “The Supreme Court has defined
14 “official policy” (in a case considering municipal liability for a sheriff’s torts) as “formal rules or
15 understandings—often but not always committed to writing—that are intended to, and do, establish
16 fixed plans of action to be followed under similar circumstances consistently and over time.” [Citation
17 omitted]. By analogy to these definitions, “corporate policy” is the general principles which guide a
18 corporation, or rules intended to be followed consistently over time in corporate operations. A
19 “managing agent” is one with substantial authority over decisions that set these general principles and
20 rules.” *Cruz v. HomeBase*, 83 Cal. App. 4th 160, 167 (2000). Nearly immediately after TCC hired him,
21 Mr. Romanio was assigned the responsibility of managing the day-to-day human resources operations
22 for TCC’s Campus Safety Department. Mr. Romanio’s title of HR Business Partner signifies to TCC
23 employees that Mr. Romanio is the conduit between employees and TCC as an employer. In dealing
24 with human resources, employees, including MR. BUTLER, believe and understand they are dealing
25 with their employer’s corporate entity, as well as someone who potentially can yield immense power
26 over them because HR bends the ear of corporate leaders. According to his LinkedIn resume, Mr.
27 Romanio “[p]rovid[es] a high level of HR leadership and guidance that empowers leaders to boldly lead
28 with confidence and knowledge”, a statement indicative of Mr. Romanio’s policy-making authority as a
managerial employee who guides TCC leaders. Manifestly, to TCC employees like MR. BUTLER, the
actions of TCC’s Human Resources Department, including Mr. Romanio’s, actions, are actions of TCC.
Mr. Romanio helped personally manage TCC’s Human Resources Department, a significant aspect of
TCC’s business, i.e. the most crucial aspects of TCC’s relationship with its employees, and exercised

1 substantial independent authority and judgment in so doing. Neither TCC, nor Mr. Romanio, should not
2 be allowed to insulate themselves from liability by giving an employee a nonmanagerial title and
3 relegating to Mr. Romanio crucial policy decisions. Mr. Romanio had authority to ignore, neglect,
4 refuse, resolve, or otherwise deal with TCC employee(s)' human resource matters, including complaints
5 about employee pay and fulfilling requests for employment records. The authority exercised by Mr.
6 Romanio necessarily results in the ad hoc formulation of policy. On information and belief, Mr.
7 Romanio exercised his authority with little supervision, and thus possesses sufficient discretion for the
8 law to impute Mr. Romanio's actions concerning the disposition of an employee's claims to TCC, as
9 well as to hold Mr. Romanio personally liable as a TCC "managing agent" under Labor Code § 558.1
10 because Mr. Romanio violated or caused to be violated by engaging in conduct resulting in the violation
11 of provisions regulating minimum wages or hours and days of work in Industrial Welfare Commission
12 (I.W.C.) Order 4-2001, as well as violated or caused to be violated by engaging in conduct resulting in
13 the violation of Labor Code §§ 203, 226, 226.7, 1194 and 2802. Mr. Romanio may also be held
14 personally liable under I.W.C. Order 4-2001 § 20(A) which states in relevant part, "In addition to any
15 other civil penalties provided by law, any employer or any other person acting on behalf of the employer
16 who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:
17 (1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the
18 employee was underpaid in addition to the amount which is sufficient to recover unpaid wages. (2)
19 Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the
20 employee was underpaid in addition to an amount which is sufficient to recover unpaid wages. (3) The
21 affected employee shall receive payment of all wages recovered."

22 23. MR. BUTLER is informed and believes, and based upon such information and belief, alleges
23 DEFENDANTS are responsible in some manner for one or more of the occurrences that proximately
24 caused, and therefore are liable for, the injuries and damages alleged within this operative complaint
25 MR. BUTLER, Aggrieved PAGA Employees, and CLASS members suffered.

26 **VICARIOUS LIABILITY**

27 24. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through
28 23 above as though fully set forth herein.

25 25. Pursuant to Labor Code § 558.1, "(a) Any employer or other person acting on behalf of an
26 employer, who violates, or causes to be violated, any provision regulating minimum wages or hours
27 and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be
28 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such

1 violation. (b) For purposes of this section, the term “other person acting on behalf of an employer” is
2 limited to a natural person who is an owner, director, officer, or managing agent of the employer, and
3 the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

4 (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

5 26. Mr. Lanesskog, Devin Romanio, and DOES may be managing agents, co-conspirators, joint
6 venturers, officers and/or employees of TCC, and at all relevant times acted within the course and
7 scope of said agency, conspiracy, joint venture, and/or employment, with the knowledge and/or consent
8 of TCC. MR. BUTLER is informed and believes that each Defendant authorized and/or ratified the
9 wrongful activities of each of the remaining Defendants alleged within this operative Complaint.
10 TCC’S conduct was undertaken by its director(s), officer(s), managing agent(s) and other persons
11 responsible for supervision of employees and for the drafting and implementation of policies and other
12 managerial decisions. The conduct of the officers, managing ag§ 20(A) ents, and other individuals was
13 on behalf of TCC. Further, TCC had advance knowledge of such conduct of said individuals whose
14 actions and conduct were authorized, approved, ratified, and/or actually or constructively known by
15 TCC’s director(s), officer(s), managing agent(s) and other persons responsible for supervision of
16 employees and for the drafting and implementation of policies and other managerial decisions.

15 **PAGA ADMINISTRATIVE REMEDIES EXHAUSTED**

16 27. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through
17 26 above as though fully set forth herein.

18 28. MR. BUTLER timely sent a PAGA Notice by certified mail to TCC, Mr. Lanesskog, and DOES
19 1 through 10 on July 29, 2020, and filed the PAGA Notice with the Labor Workforce and Development
20 Agency (LWDA) via <https://dir.tfaforms.net/128>, the LWDA’s online portal. On June 30, 2021, MR.
21 BUTLER amended the PAGA Notice, which TCC received via certified mail by/on July 6, 2021.

22 29. Through the initial and amended PAGA Notices, MR. BUTLER complied with Labor Code
23 sections 2699.3(a)(1)(A), 2699.3(b)(1), and 2699.3(c)(1)(A).

24 30. Thus, MR. BUTLER exhausted his administrative remedies pursuant to Labor Code § 2699.3
25 and has the right to pursue PAGA penalties on behalf of himself and other Aggrieved Employees.

26 31. Any future amendments to MR. BUTLER’S PAGA Notice are incorporated by reference into
27 the operative complaint for this action.

27 **LABOR CODE § 211 DEMAND**

28 32. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through
31 above as though fully set forth herein.

33. According to Labor Code § 211, a demand is a prerequisite to the bringing of any action under Labor Code § 210 or § 211.

34. MR. BUTLER's PAGA Notice also served as the demand required by Labor Code § 211 in which MR. BUTLER demanded, on behalf of himself and other Aggrieved Employees, TCC pay the highest calculatable penalties under § 210, as well as pay all wages due yet unpaid to Aggrieved Employees, including MR. BUTLER, under § 204 and/or § 1197.5.

CLASS DEFINITION(S)

35. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through 34 above as though fully set forth herein. MR. BUTLER brings his class action claims on behalf of himself and on behalf of all other similarly situated persons pursuant to California's Code of Civil Procedure (C.C.P) § 382. The members of the California-Only Putative Class belong to the (a) Non-Exempt Employees Wages Class; (b) Premium Pay Class; (c) Wage Statement Class; (d) Former Employees Class; (e) Reimbursement-Owed Class; and (f) Restitution Class (collectively the "Class") defined as follows:

- (a) **Non-Exempt Employees Wages Class:** All persons who, at any time since the date three years before the filing of the initial complaint until the future disposition of this case (class period), worked for TCC in California as a non-exempt employee including but not limited to Campus Safety Officers and Corporals, as well as employees whom TCC misclassified as salaried exempt, including but not limited to Sergeants and
- (i) who were not compensated for time worked including but not limited to donning and doffing required work uniforms TCC required employees to don and doff on TCC premises; and/or
 - (ii) employees who were subject to TCC's unlawful rounding policy, practice and procedure, including but not limited to Campus Safety Officers, Corporals, Dispatchers, and/or Sergeants. The Non-Exempt Employees Wages Class includes but is not limited to employees who worked over eight hours in a workday or over forty hours in a workweek prior to the date TCC implemented the results from its August 14, 2020 alternative workweek election pursuant to Labor Code § 511, as well as affected employees in the Campus Safety Department who work/ed over 10 hours in a workday or over 40 hours in a workweek after TCC implemented an alternative workweek schedule consisting of four days, ten hours per day;
 - (iii) and/or employees paid wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions; and/or

(iv) employees paid wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

(b) **Premium Pay Class:** All persons who, at any time since the date three years before the filing of the initial complaint until the future disposition of this case (class period), worked for TCC in California as a non-exempt employee or TCC misclassified as salaried exempt, and who did not have a legitimate opportunity to take Labor Code compliant meal and/or rest breaks because their meal and/or rest break(s) were interrupted, missed, or untimely for any reason that was not their own fault such as TCC's requirement that employees monitor a radio on their persons at all working times, for example as such was the case with Campus Safety Officers, Corporals, Sergeants and Dispatchers;

(c) **Wage Statement Class:** All persons who, at any time since the date three years before the filing of the complaint until the future disposition of this case (class period), worked for TCC in California as a non-exempt employee or whom TCC misclassified as salaried exempt, and whose itemized wage statements are inaccurate and caused injury to such employee(s) including but not limited to TCC failing to accurately detail all of the gross wages earned by employees, TCC failing to accurately detail the total hours worked by employees due to unaccounted for off-the-clock work and/or an unlawful rounding policy/procedure/practice, TCC failing to provide the actual name of the legal entity that is the employer;

(d) **Former Employees Class:** All persons who worked for TCC in California as a non-exempt employee or whom TCC misclassified as salaried exempt, and whose employment with TCC ended at any time since the date three years before the filing of the initial complaint until the future disposition of this case (class period), and TCC willfully failed to pay all wages earned upon employment separation;

(e) **Reimbursement-Owed Class:** All persons who worked for TCC in California as an employee, and whose employment with TCC ended at any time since the date three years before the filing of the initial complaint until the future disposition of this case (class period), and TCC failed to indemnify for all necessary expenditures or losses incurred by these employees in direct consequence of the discharge of their duties, or of their obedience to the directions of TCC. This includes but is not necessarily limited to reimbursement for the following: the pro rata use of employees' cellphones including but not limited to take evidentiary pictures and conduct work-related calls; work-related black shoes/boots required by TCC as part of their uniform, and shoe polish; and

(f) **Restitution Class:** All persons who, at any time since the date four years before the filing of the initial complaint until the future disposition of this case (class period), worked for TCC in California as a non-exempt employee or whom TCC misclassified as salaried exempt, and is owed restitution for TCC's unfair competition due to TCC's numerous violations of California's Labor Code.

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CLASS ALLEGATIONS

36. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through 35 above as though fully set forth herein. The requirements for class certification are met in this case as follows: TCC failed to pay MR. BUTLER and the Non-Exempt Employees Wages Class all minimum, regular, overtime, and possibly double time wages these employees earned for the time TCC's policies, procedure(s), and/or practice(s) required them to don and doff their respective uniforms upon work premises during MR. BUTLER'S entire duration of employment with TCC until such time TCC ceases such unlawful uniform policy, procedure, and/or practice. TCC also engaged/s in unlawful rounding practices, resulting in TCC not only failing to compensate MR. BUTLER for all the time he worked for TCC, but also failing to compensate all non-exempt employees for all the time they worked. As a result of TCC's failure to pay its non-exempt employees all wages they earned, TCC also uniformly failed to provide MR. BUTLER and other Wage Statement Class members with accurate and complete wage statements as required by Labor Code § 226. TCC's wage statements for all its employees, both exempt and non-exempt, uniformly failed to list TCC and instead list TCCS as the Wage Statement Class members' employer. Also, TCC owes MR. BUTLER and other Premium Pay Class members premium pay because they were on call throughout all meal and rest breaks due to their adherence to TCC's uniform policy, procedure and/or practice mandating Campus Safety personnel—including but not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and Dispatchers—keep their respective radio on during the entire duration of a scheduled shift and respond to any and all radio notices no matter what during the entire shift(s) these employees worked. Additionally, TCC uniformly failed to pay former employees, including MR. BUTLER, all the wages owed to them upon separation of employment as required by Labor Code § 201 and/or § 202. As a result, TCC is liable to the Former Employees Class members, including MR. BUTLER, for waiting time penalties pursuant to Labor Code § 203 for TCC's willful failure to pay former employees all the wages owed to them upon separation of employment. TCC failed to indemnify the Reimbursement-Owed Class, including MR. BUTLER, for all necessary expenditures or losses incurred by these employees in direct consequence of the discharge of their duties, or of their obedience to the directions of TCC under Labor Code § 2802, including but not limited to reimbursement for the following: the pro rata use of employees' cellphones including but not limited to conduct work-related calls and take evidentiary pictures; work-related black shoes/boots required by TCC as part of their uniform, and shoe polish. Lastly, due to its Labor Code violations, TCC unfairly competed by gaining an unfair advantage over TCC's competition. Thus, TCC is liable to the Restitution Class for its unfair competition.

1 **37. Numerosity:** The class members are so numerous that the individual joinder of all
2 them as named/described by MR. BUTLER is impracticable. While the exact number of all CLASS
3 members is unknown to MR. BUTLER at this time, MR. BUTLER is informed and believes and thereon
4 alleges that there are not less than 50 members in each of the following classes: (a) Non-Exempt
5 Employees Wages Class; (b) Premium Pay Class; (c) Wage Statement Class; (d) Former Employees
6 Class; (e) Reimbursement-Owed Class; and (f) the Restitution Class. According to TCCS's (a.k.a.
7 TCC's) website, "Stig Lanesskog, the Chief Executive Officer of TCCS oversees a staff of over 400 that
8 provides...services that integrate fully with the missions of the institutions served by TCCS." Therefore,
9 it is possible the Class may be comprised of hundreds of members, and likely is due to TCC's violation
10 of Labor Code § 226 in listing TCCS instead of TCC as the employer.

11 **38. Community of Interests:** This action has been brought and may be maintained as a class action
12 pursuant to C.C.P. § 382 because there is a well-defined community of interests among many
13 persons who comprise a readily ascertainable class. Per *Vasquez v. Superior Court* (1971) 4 Cal.3d
14 800, 809, the right of each employee to recover is not based on a separate set of facts applicable only to
15 him/her. "The requirement of a community of interest does not depend upon an identical recovery, and
16 the fact that each member of the class must prove his separate claim to a portion of any recovery by the
17 class is only one factor to be considered in determining whether a class action is proper." *Id.* "The
18 "community of interest" requirement embodies three factors: (1) predominant common questions of law
19 or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
20 who can adequately represent the class." *Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th
319, 326. Courts may also consider whether the class action procedure is "superior" to litigating claims
individually.

21 **39. Commonality:** Common questions of law and fact exist as to the members of the Class and
22 predominate over any questions that affect only individual members of the Class. Though "[i]ndividual
23 issues do not render class certification inappropriate so long as such issues may effectively be
24 managed." *Id.* at p. 33. These common questions of law and fact include, but are not limited to: (i) Did
25 TCC fail to pay earned wages to Class members by requiring them to don TCC-required uniforms off-
26 the-clock at TCC's work premises prior to clocking in for their scheduled work shift? (ii) Did TCC fail
27 to pay earned wages to Class members by requiring them to doff TCC-required uniforms off-the-clock
28 at TCC's work premises after clocking out upon finishing their scheduled work shift? (iii) Did TCC
utilize a time rounding system that led to TCC violating California's wage and hour laws that resulted in
TCC's failure to pay Class members all wages owed for all hours worked? (iv) During meal and/or rest

1 periods, did TCC expect Class members to be on call by requiring them to carry and monitor a
2 communication device, e.g. radio, and thus TCC owes Class members premium pay for interrupted, late,
3 and/or missed meal and rest periods? (v) Are the wage statements of Class members inaccurate and did
4 such inaccuracy cause Class members injury in violation of Labor Code § 226? (vi) Did TCC willfully
5 fail to pay Class members who no longer work for TCC all the wages they earned upon separation of
6 employment, and if so are these Class members entitled to waiting time penalties pursuant to Labor
7 Code § 203? (vii) Did TCC fail to indemnify Class members for all necessary business expenses, and
8 thus owes reimbursement with interest to Class members? (viii) Are Class members owed restitution due
9 to TCC's unfair competition for TCC's numerous violations of California's Labor Code. Even though
10 all Class members may not have suffered a violation of the same laws, essentially the Class members
11 have suffered the same injury. The Class members claims depend upon a common contention that is of
12 such a nature that it is capable of class wide resolution, which means that determination of its truth or
falsity will resolve the issues that are central to the validity of each one of the claims in one stroke.

13 **40. Typicality:** MR. BUTLER is a member of the Non-Exempt Employees Wages Class; Premium
14 Pay Class; Wage Statement Class; Former Employees Class; Reimbursement-Owed Class, and the
15 Restitution Class. The claims of MR. BUTLER are typical of the claims of the other class members who
16 MR. BUTLER seeks to represent. MR. BUTER was formerly employed by TCC as a Camps Safety
17 Officer, then Corporal who also performed Dispatcher duties when the job required such, and was
18 subjected to the same unlawful practices as other former and current TCC employees. MR. BUTLER
and other members of the Class suffered the same injuries and seek the same relief.

19 **41. Adequacy:** MR. BUTLER will adequately and fairly protect the interests of the Class. MR.
20 BUTLER has no interest adverse to the interests of absent class members, and MR. BUTLER is
21 represented by attorney(s) with adequate experience in civil litigation and employment law.

22 **42. Manageability:** A class action is superior to other available means (if any) for fair and efficient
23 adjudication of the claims of the Class and would be beneficial for the Parties and the court. Class action
24 treatment will allow a large number of similarly situated persons to prosecute their common claims in a
25 single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense
26 that numerous individual actions would require. The monetary amounts due to many individual Class
27 members are likely to be relatively small, and the burden and expense of litigation would make it
28 difficult or impossible for Class members to seek and obtain relief through individual lawsuits. A class
action will serve an important public interest by providing Class members an effective mechanism for
redress of violation of their statutory rights. MR. BUTLER is presently unaware of any difficulties that

are likely to be encountered in the management of this action that would preclude its maintenance as a class action but reserves the right to modify his allegations and/or the class definitions based on further investigation, discovery and/or legal developments. The operative complaint is meant to establish by a preponderance of the evidence that common issues predominate, thus a class action is superior to alternate means for a fair and efficient adjudication of the litigation.

CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST ONLY TCC

Lab. Code § 201 Violation & Civil Penalties Under PAGA

(By MR. BUTLER o/b/o Former Employees Class and Aggrieved Employees)

43. MR. BUTLER incorporates paragraphs 1 through 42 of this operative complaint as if fully alleged herein, and pleads the following on behalf of the Former Employees Class, and Aggrieved Employees against only TCC:

44. Labor Code § 201(a) reads in relevant part “If an employer discharges an employee, the wages^[1] earned and unpaid at the time of discharge are due and payable immediately.”

45. Although MR. BUTLER was not discharged, MR. BUTLER knows TCC discharged other members of the Former Employees Class and Aggrieved Employees. When TCC discharged the relevant Former Employees Class members and other Aggrieved Employees, TCC failed to pay all the respective wages they earned but remained unpaid at the time of discharge which became due and payable immediately.

46. However, TCC failed to immediately pay relevant discharged Former Employees Class members and Aggrieved Employees all earned and unpaid wages at the time of discharge, including but not necessarily limited to minimum, regular, overtime, double time wages, and/or vacation pay that should have accrued, due to these relevant Former Employees Class members and Aggrieved Employees (a) working off-the-clock every workday to don and doff their (i) TCC-required work uniforms on TCC’s premises, (ii) protective gear such as a ballistic vest, and (iii) other work-related equipment. “The relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off the clock without compensation.” *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848.

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¹ According to Labor Code §200(a) “Wages includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Under § 200(b) “Labor” includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

1 47. TCC also failed to pay reporting time pay to relevant members of the Former Employees Class
2 and discharged Aggrieved Employees. Reporting time pay constitutes wages. See *Murphy v. Kenneth*
3 *Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due at the
4 time of employment termination is a basis for waiting time penalties pursuant to Labor Code § 203, and
5 also a basis for PAGA civil penalties for TCC's Labor Code § 201 violations.

6 48. Also, TCC failed to immediately pay relevant discharged Former Employees Class members and
7 Aggrieved Employees all earned and unpaid premium pay owed by TCC to these employees pursuant to
8 Labor Code § 226.7 because they were/are on-call during meal and rest breaks. Thus, these Former
9 Employees Class members and Aggrieved Employees did not have a legitimate opportunity to take meal
10 and/or rest breaks, took such untimely, and/or such meal and/or rest breaks were interrupted, especially
11 with Former Employees Class members and Aggrieved Employees who were Campus Safety Officers,
12 Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible
13 volume but whom TCC expected they respond to radio notices regardless of whether they were on a
14 meal or rest break. Furthermore, at all times relevant to this action, TCC's written policies did not
15 authorize off-duty meal and/or rest breaks for Campus Safety Officers, Corporals, Sergeants, and/or
16 Dispatchers. "...[T]he remedy provided in Labor Code section 226.7 constitutes a wage or premium pay
17 and is governed by a three-year statute of limitations..." (*Murphy v. Kenneth Cole Productions, Inc.*
18 (2007) 40 Cal. 4th 1094), the entire duration for which MR. BUTLER representatively seeks monetary
19 damages.

20 49. Also, TCC's policy, procedure, and/or practice of utilizing an uneven/unlawful rounding system
21 resulted in, over a period of time, TCC's failure to compensate the Former Employees Class members
22 and Aggrieved Employees properly for all the time they actually worked. A rounding policy is not
23 "consistent with the core statutory and regulatory purpose that employees be paid for all time
24 worked...In light of the wage order's remedial purpose requiring a liberal construction, its directive to
25 compensate employees for all time worked, the evident priority it accorded that mandate
26 notwithstanding customary employment arrangements, and its concern with small amounts of time, the
27 de minimis doctrine has no application under the circumstances presented here." *Troester v. Starbucks*
28 *Corp.* at 847. TCC is an employer that requires its employees to work several minutes off the clock on a
regular basis or as a regular feature of the job. For example, TCC required Former Employees Class
members and Aggrieved Employees who were Campus Safety Officers, Corporals, and Sergeants to don
and doff their uniform off-the-clock during every shift. Despite this unlawful policy, procedure, and/or
practice, TCC nevertheless also utilized a rounding system that, over time, shorted these employees even

1 more compensation to which they are entitled. TCC may not evade the obligation to compensate its
2 employees for that time by invoking the de minimis doctrine. "...[A] few extra minutes of work each
3 day can add up." *Id.* Thus, TCC's rounding policy resulted in TCC not complying with Labor Code §
4 201 because TCC failed to compensate former TCC employees who are members of the Non-Exempt
5 Employees Wages Class, Former Employees Class, and relevant Aggrieved Employees for the
6 numerous minutes of work each pay period that added up due to TCC's rounding system.

7 50. Thus, TCC failed to immediately pay, upon separation of employment, all wages earned by
8 members of the Former Employees Class and Aggrieved Employees TCC discharged. Consequently,
9 TCC violated Labor Code § 201 and is liable to Aggrieved Employees for PAGA penalties under Labor
10 Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2).

11 51. Labor Code § 2699.3(f) states, "For all provisions of this code except those for which a civil
12 penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as
13 follows: (2) If, at the time of the alleged violation, the person employs one or more employees, the civil
14 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
15 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
16 subsequent violation.

17 **SECOND CAUSE OF ACTION AGAINST ONLY TCC**

18 **Lab. Code § 202 Violation & Civil Penalties Under PAGA**

19 **(By MR. BUTLER, Former Employees Class, and Aggrieved Employees)**

20 52. MR. BUTLER incorporates paragraphs 1 through 51 of this operative complaint as if fully
21 alleged herein, and pleads the following on behalf of himself, the Former Employees Class, and
22 Aggrieved Employees against only TCC:

23 53. Under Labor Code § 202(a) "If an employee not having a written contract for a definite period
24 quits his or her employment, his or her wages shall become due and payable not later than 72 hours
25 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in
26 which case the employee is entitled to his or her wages at the time of quitting..."

27 54. MR. BUTLER quit TCC's employment by giving at least 72 hours previous notice of his
28 intention to quit with his last working day to be July 29, 2019, which it was.

55. MR. BUTLER knows for himself and, on information and belief, believes TCC also did not
timely pay to other Former Employees Class members and Aggrieved Employees who quit all of their
earned and unpaid wages in compliance with Labor Code § 202(a), including but not necessarily limited
to minimum, regular, overtime, double time wages, and/or vacation pay that should have accrued, due to

1 the relevant Former Employees Class members and Aggrieved Employees (a) working off-the-clock
2 every workday to don and doff their (i) TCC-required work uniforms on TCC's premises, (ii) protective
3 gear such as a ballistic vest, and (iii) other work-related equipment. "The relevant statutes and wage
4 order do not allow employers to require employees to routinely work for minutes off the clock without
5 compensation." *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848.

6 56. Also, TCC failed to comply with Labor Code § 202(a) because TCC failed to pay relevant
7 Former Employees Class members and Aggrieved Employees all earned and unpaid premium pay in
8 accordance with Labor Code § 226.7 TCC owed to these employees being on-call during meal and rest
9 breaks because these Former Employees Class members and Aggrieved Employees did not have a
10 legitimate opportunity to take meal and/or rest breaks, took such untimely, and/or such meal and/or rest
11 breaks were interrupted, especially Former Employees Class members and Aggrieved Employees who
12 were Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers TCC expected to not only keep
13 their radios powered on with audible volume but also respond to radio notices regardless of whether they
14 were on a meal or rest break. Furthermore, at all times relevant to this action, TCC's written policies did
15 not authorize off-duty meal and/or rest breaks for Campus Safety Officers, Corporals, Sergeants, and/or
16 Dispatchers. "...[T]he remedy provided in Labor Code section 226.7 constitutes a wage or premium pay
17 and is governed by a three-year statute of limitations..." (*Murphy v. Kenneth Cole Productions, Inc.*
18 (2007) 40 Cal. 4th 1094), the entire duration for which MR. BUTLER representatively seeks monetary
19 damages.

20 57. Also, TCC's policy, procedure, and/or practice of utilizing an uneven/unlawful rounding system
21 resulted in, over a period of time, TCC's failure to compensate Former Employees Class members and
22 Aggrieved Employees properly for all the time they actually worked. A rounding policy is not
23 "consistent with the core statutory and regulatory purpose that employees be paid for all time worked..."
24 In light of the wage order's remedial purpose requiring a liberal construction, its directive to compensate
25 employees for all time worked, the evident priority it accorded that mandate notwithstanding customary
26 employment arrangements, and its concern with small amounts of time, the de minimis doctrine has no
27 application under the circumstances presented here." *Troester* at 847. TCC is an employer that requires
28 its employees to work minutes off the clock on a regular basis or as a regular feature of the job. For
example, TCC required Former Employees Class members and Aggrieved Employees who were
Campus Safety Officers, Corporals, and Sergeants to don and doff their uniform off-the-clock during
every shift. Despite this unlawful policy, procedure, and/or practice, TCC nevertheless also utilized a
rounding system that, over time, shorted these employees even more compensation to which they are

entitled. TCC may not evade the obligation to compensate its employees for that time by invoking the de minimis doctrine. "...[A] few extra minutes of work each day can add up." *Id.* Thus, TCC's rounding policy resulted in TCC not complying with Labor Code § 202(a) because TCC failed to compensate the relevant Former Employees Class members and Aggrieved Employees for the numerous minutes of work each pay period that added up due to TCC's rounding system.

58. Thus, TCC failed to pay members of the Former Employees Class and Aggrieved Employees who quit all earned and unpaid wages in compliance with Labor Code § 202.

59. Thus, TCC violated Labor Code § 202 and is liable to Aggrieved Employees for PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2).

60. Labor Code § 2699.3(f) states, "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one 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.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS

Lab. Code § 203 Statutory Penalties & Civil Penalties Under PAGA

(By MR. BUTLER, the Former Employees Class, and Aggrieved PAGA Employees)

61. MR. BUTLER incorporates paragraphs 1 through 60 of this operative complaint as if fully alleged herein, and pleads the following on behalf of himself, the Former Employees Class, and Aggrieved Employees against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds liable any employer or other person—who is an owner, director, officer, or managing agent of the employer—acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 203.

62. California's public policy favors the full and prompt payment of wages due an employee. To ensure that employers comply with the laws governing the payment of wages when an employment relationship ends, California's Legislature enacted Labor Code § 203 to provide for the assessment of a statutory penalty against the employer when there is a willful failure to pay wages due the employee at conclusion of the employment relationship.

63. Labor Code § 203(a) states in pertinent part, "If an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 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

1 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the
2 wages shall not continue for more than 30 days.”

3 64. According to Labor Code § 203(b), “Suit may be filed for these penalties at any time before the
4 expiration of the statute of limitations on an action for the wages from which the penalties arise, which
5 is three (3) years. All compensation is considered in determining if all wages due were paid as
6 prescribed by law, including the following wages/pay TCC failed to tender to MR. BUTLER, the
7 Former Employees Class members and Aggrieved Employees: (1) minimum, regular, overtime, and/or
8 possibly double time wages due to working off-the-clock hours to don and doff (i) a required uniform,
9 (ii) protective gear including ballistic vest, and (iii) other work-related equipment; (2) all wages due to
10 TCC’s unlawful rounding system; (3) all accrued, but unused, vacation or vacation that should have
11 accrued and which TCC should have paid out upon Former Employees Class members’ and Aggrieved
12 Employees’ separation of employment from TCC; (4) reporting time pay in violation of the Industrial
Wage Order applicable to TCC, and (5) failing to pay premium pay per Labor Code § 226.7.

13 65. MR. BUTLER knows for himself, and believes in good faith for other Former Employees Class
14 Members and Aggrieved Employees, that DEFENDANTS willfully failed to timely pay them all of their
15 earned wages upon separation of employment.

16 66. “The settled meaning of “willful,” as used in section 203, is that an employer has intentionally
17 failed or refused to perform an act which was required to be done. (*Barnhill v. Robert Saunders & Co.*
18 (1981) 125 Cal.App.3d 1, 7-8; *Davis v. Morris* (1940) 37 Cal.App.2d 269, 274). “[T]o be at fault within
19 the meaning of [section 203], the employer’s refusal to pay need not be based on a deliberate evil
20 purpose to defraud workmen of wages which the employer knows to be due. *See Amaral v. Cintas Corp.*
21 (2008) 163 Cal.App.4th 1157, 1201; *Barnhill, supra*, 125 Cal.App.3d at p. 7; and *Davis v. Morris,*
22 *supra*, 37 Cal.App.2d at p. 274. As used in section 203, ‘willful’ merely means that the employer
23 intentionally failed or refused to perform an act which was required to be done.” *Gonzalez v. Downtown*
24 *LA Motors, LP* (2013) 215 Cal.App.4th 36, 54. “In civil cases the word ‘willful’ as ordinarily used in
25 courts of law, does not necessarily imply anything blamable, or any malice or wrong toward the other
26 party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done, was
27 done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is
doing, intends to do what he is doing, and is a free agent.” *Nishiki v. Danko Meredith, P.C.* (2018) 25
Cal.App.5th 883, 891.

28 67. On Thursday, July 25, 2019 at 1:37 PM, Devin Romanio emailed MR. BUTLER, informing
him that his “final pay/check will be available for pick up at the ACC Front Desk Monday (7/29) after

1 3pm.” MR. BUTLER replied, explaining that his “last day of work is, Monday, July 29, 2019, and [he’s]
2 off at 6:00am. [He] do[es]n’t live in the area and would likely have a 2+ hour commute to pick up the
3 check after 3pm. Can something be worked out to have the check ready shortly after 6:00am?” They
4 agreed MR. BUTLER’s final paycheck could be mailed to him. On Monday, July 29, 2019 at 11:00 am,
5 MR. BUTLER emailed Mr. Romanio, writing “Sir, Thank you, I received the check this morning;
6 however, I did notice a discrepancy. Attached is a screen shot of my worked hours via Kronos and a
7 screen shot of my pay slip. My worked hours are 74.15 hours. My pay slip states 72.07 regular hours
8 and 1.33 overtime hours for a total of 73.4 hours. Time discrepancy - $74.15 - 73.4 = 0.75$ overtime
9 hours. May the pay discrepancy be corrected please? In addition, may I have a copy of my employee file
10 TCCS has on my employment to include all annual performance evaluations? Thank you in advance.”
11 Mr. Romanio, and thus TCC, ignored MR. BUTLER’s requests.

12 68. MR. BUTLER’s payroll record for his final check, as well as his other inaccurate payroll records
13 reconciled against his inaccurate time records and his anticipated testimony of having worked off-the-
14 clock, plus having worked through meal and rest breaks, all proof DEFENDANTS paid MR. BUTLER
15 less than the hours he actually worked due to MR. BUTLER (a) working off-the-clock to don and doff
16 his campus safety uniform and protective gear such as a ballistics vest every shift he worked; (b) being
17 on-call during meal and rest breaks because he did not have a legitimate opportunity to take such
18 uninterrupted, especially because MR. BUTLER was expected to not only keep his radio powered on
19 with audible volume but also respond to radio notices regardless of whether he was on a meal or rest
20 break; (c) accruing vacation time due to off-the-clock work that TCC failed to report on wage
21 statements; and (d) due to TCC’s policy, procedure, and/or practice of utilizing an uneven rounding
22 system that resulted in, over a period of time, TCC’s failure to compensate Former Employees Class
23 members and Aggrieved Employees properly for all the time they actually worked.

24 69. MR. BUTLER’s payroll record for his final paycheck demonstrates TCC paid MR. BUTLER
25 \$24.35 per hour for regular hours worked and \$36.525 per hour for overtime hours worked. As noted
26 above, on Monday July 29, 2019, MR. BUTLER put TCC on notice via his email to Mr. Romanio (HR)
27 at 11:00 am that his final paycheck was missing earned wages. To this day, TCC has ignored MR.
28 BUTLER’s email requesting to have his last paycheck corrected and a copy of his employment file.

70. DEFENDANTS’ and Mr. Romanio’s utter disregard of MR. BUTLER’s request to have his final
paycheck corrected is sufficient evidence DEFENDANTS willfully failed to pay, without abatement or
reduction, in accordance with § 202 any wages of MR. BUTLER who quit. To this date, Mr. Lanesskog

1 has yet to order the payment of all of MR. BUTLER’S earned wages. MR. BUTLER believes his
2 experience is similar to that of other Former Employees Class members and Aggrieved Employees.

3 71. Therefore MR. BUTLER’s wages continue as a penalty from the due date thereof at the same
4 rate until paid or until an action therefor is commenced; but the wages do not continue for more than 30
5 days. Given MR. BUTLER’s last day of work was on July 29, 2019, combined with the filing date of
6 this operative complaint, clearly 30 days have elapsed.

7 72. MR. BUTLER may file suit “for these [statutory] penalties at any time before the expiration
8 of the statute of limitations on an action for the wages from which the penalties arise”, i.e. three (3)
9 years. MR. BUTLER filed this action on September 14, 2020, a date which is well within the 3-years
10 statute of limitations, especially taking revised Judicial Council Emergency Rule 9 which is incorporated
11 by reference into this operative complaint.

12 73. In calculating the rate of pay for purposes of computing the penalty, overtime and double time
13 wages are considered if they were regularly scheduled or worked each week, as is/was the case for MR.
14 BUTLER during his employment with TCC. The penalty is measured at the employee’s daily rate of pay
15 and is calculated by multiplying the daily wage by the number of days that the employee was not paid,
16 up to a maximum of 30 days. The 30-day period is calendar days and includes weekends and holidays
17 and any other days that the employee would not normally work.

18 74. Thus, DEFENDANTS owe MR. BUTLER a minimum of \$5,844 as a waiting time penalty,
19 which is based only on MR. BUTLER’s pay for regular hours worked (\$24.35 X 8 hours X 30 days) but
20 does not yet include his average overtime pay to calculate MR. BUTLER’s regular rate of pay, a higher
21 dollar figure for which MR. BUTLER will have the ability to accurately calculate only through the
22 discovery phase of litigation.

23 75. With regard to waiting time statutory penalties under Labor Code § 203 for the Former
24 Employees Class which includes MR. BUTLER, according to page 5 of TCC’s Campus Safety Training
25 Manual on Grooming – Uniform – Equipment, under Additional Guidelines pertaining to UNIFORM,
26 “You [meaning Campus Safety personnel] must be fully dressed and properly groomed **from the**
27 **moment you clock in**”, including equipment. According to page 7 of TCC’s Campus Safety Training
28 Manual on Grooming – Uniform – Equipment, under EQUIPMENT, “Campus Safety personnel are
responsible for the safekeeping and security of all department-issued equipment, such as two-way radio
and flashlight in their possession.” Under the header **Duty Belt/Gear**, “*Unless otherwise directed,*
personnel are to wear the department-issued duty belt and authorized gear at all times while on duty.”

1 *The placement of the gear items on the duty belt shall be in the following order, looking at the duty belt*
2 *from left to right: Belt Keeper—Key Pouch—Baton—Radio—Belt Keeper—Gloves—Belt Keeper—*
3 *Handcuffs—Flashlight —Mace—Metal Key Hook—Belt Keeper.* Under **Special Note**, “Unless otherwise
4 directed by Director of Campus Safety, personnel may not take the department-issued baton and pepper
5 spray off campus and must secure these items in their employee locker space upon departure from
6 campus.” Thus, TCC not only knew but also intended, as demonstrated by TCC’s Campus Safety
7 Training Manual, its Campus Safety Personnel—including but not necessarily limited to Campus Safety
8 Officers, Corporals, Sergeants, and Dispatchers—to don their uniforms and equipment prior to clocking
9 in, i.e. off-the-clock—because Campus Safety personnel “must be fully dressed and properly groomed
10 **from the moment [they] clock in.**” Likewise, TCC not only knew but also intended, as demonstrated
11 by TCC’s Campus Safety Training Manual, its Campus Safety Personnel—including but not necessarily
12 limited to Campus Safety Officers, Corporals, Sergeants, and Dispatchers—to doff their uniforms and
13 equipment after clocking out, i.e. off-the-clock—because Campus Safety “personnel may not take the
14 department-issued baton and pepper spray off campus and must secure these items in their employee
15 locker space upon departure from campus.” Therefore, TCC owes statutory waiting time penalties under
16 Labor Code § 203 to MR. BUTLER and the Former Employees Class for knowing and intending for
17 them to don and doff their uniforms and equipment off-the-clock, and more importantly for knowing and
18 intending to not compensate them for this off-the-clock donning and doffing.

19 76. Due to the actual time MR. BUTLER worked compared to his inaccurate payroll records, on
20 information and belief, other Former Employees Class members and Aggrieved Employees experienced
21 the same unlawful conduct perpetrated upon them by DEFENDANTS.

22 77. Also, on information and belief, the estimated Labor Code § 203 penalty for the Former
23 Employees Class is, on average, likely similar to MR. BUTLER’s monetary § 203 statutory penalty.

24 78. Summarily, DEFENDANTS continue to willfully fail to pay MR. BUTLER, the Former
25 Employees Class and other Aggrieved Employees all of their earned and unpaid wages without
26 abatement or reduction which were due upon separation of employment, including but not necessarily
27 limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time,
28 requested sick leave, and/or vacation pay due to (a) working off-the-clock to don and doff their campus
safety uniforms and equipment such as protective gear including but not limited to a ballistic vest; (b)
being on-call during meal and rest breaks because Aggrieved Employees and Former Employees Class
members did not have a legitimate opportunity to take such uninterrupted, especially those who were
Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios

1 powered on with audible volume but also respond to radio notices regardless of whether they were on a
2 meal or rest break; and (c) due to TCC's policy, procedure, and/or practice of utilizing an uneven
3 rounding system that resulted in, over a period of time, DEFENDANTS' failure to compensate the
4 Former Employees Class members and Aggrieved Employees properly for all the time they actually
5 worked.

6 79. Thus, DEFENDANTS violated and, on information and belief, continue to violate Labor Code §
7 203. As a result, DEFENDANTS are not only liable for statutory waiting time penalties to MR.
8 BUTLER and the Former Employees Class, but also are liable for the attendant PAGA penalties to MR.
9 BUTLER and Aggrieved Employees under Labor Code § 2699.3(a) and § 2699.5 in accordance with §
10 2699.3(f)(2), which states, "For all provisions of this code except those for which a civil penalty is
11 specifically provided, there is established a civil penalty for a violation of these provisions, as follows:
12 (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty
13 is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
14 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

15 **FOURTH CAUSE OF ACTION AGAINST ONLY TCC**

16 **Civil Penalties Under PAGA For Labor Code § 204, § 204(a) & § 204(b) Violations**

17 **(By Aggrieved PAGA Employees Which Includes MR. BUTLER)**

18 80. MR. BUTLER incorporates paragraphs 1 through 79 of this operative complaint as if fully
19 alleged herein, and pleads the following on behalf of himself and other Aggrieved Employees against
20 only TCC:

21 81. Labor Code § 204(a) reads in relevant part "All wages, other than those mentioned in Section
22 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice
23 during each calendar month, on days designated in advance by the employer as the regular paydays.
24 Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
25 between the 16th and the 26th day of the month during which the labor was performed, and labor
26 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between
27 the 1st and 10th day of the following month..."

28 82. Per Labor Code § 204(b)(1), "Notwithstanding any other provision of this section, 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.

83. Under Labor Code § 204(b)(2), "An employer is in compliance with the requirements of
subdivision (a) of § 226 relating to total hours worked by the employee, if hours worked in excess of

1 normal work period during the current pay period are itemized as corrections on the paystub for the next
2 regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive
3 dates of the pay period for which the employer is correcting its initial report of hours....”

4 84. Labor Code § 204(d) further explains “The requirements of this section shall be deemed satisfied
5 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
6 than seven calendar days following the close of the payroll period.”

7 85. Despite the mandates of § 204, TCC did not abide by § 204(a) because TCC did not pay twice
8 during each calendar month “[a]ll wages, other than those mentioned in § 201, 201.3, 202, 204.1, or
9 204.2, earned by any person in any employment...on days designated in advance by the employer as the
10 regular paydays.” Though TCC paid MR. BUTLER and other Aggrieved Employees wages twice during
11 each calendar month, TCC failed to timely pay **all** applicable wages earned by MR. BUTLER and other
12 Aggrieved Employees.

13 86. TCC also did not abide by § 204(b) because TCC neither paid Aggrieved Employees, including
14 MR. BUTLER, for the hours they worked in excess of the normal work period no later than the payday
15 for the next regular payroll period, nor itemized as corrections these hours and pay on the paystub for
16 the next regular pay period. So, the payment of these earned wages to Aggrieved Employees certainly
17 was not made within seven calendar days following the close of the payroll period because these earned
18 wages remain unpaid. These unpaid wages include but are not necessarily limited to minimum, regular,
19 overtime, double time and/or premium wages as well as reporting time, requested sick leave, and/or
20 vacation pay due to (a) working off-the-clock to don and doff their campus safety uniforms and
21 protective gear such as a ballistics vest; (b) being on-call during meal and rest breaks because Aggrieved
22 Employees did not have a legitimate opportunity to take such uninterrupted, especially Aggrieved
23 Employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to
24 not only keep their radios powered on with audible volume but also respond to radio notices regardless
25 of whether they were on a meal or rest break; and (c) due to TCC’s policy, procedure, and/or practice of
26 utilizing an uneven rounding system that resulted in, over a period of time, TCC’s failure to compensate
27 Aggrieved Employees properly for all the time they actually worked.

28 87. Labor Code § 204, § 204(a), and § 204(b) are not just about the frequency by which an employer
pays its employees, it is also about the accuracy of those wages periodically paid. Therefore, TCC
violated Labor Code § 204, § 204(a), and § 204(b) and is subject to PAGA penalties for TCC’s violation
of § 204(a) under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2), i.e. the civil
penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial

1 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
2 subsequent violation. For applicable PAGA penalties for TCC's violation of §204 and § 204(b), please
3 refer immediately below.

4 **FIFTH CAUSE OF ACTION AGAINST ONLY TCC**

5 **Statutory Penalties Pursuant To Labor Code § 210 Due To § 204, § 204(b) And § 1197.5 Violations**

6 **(By MR. BUTLER and Non-Exempt Employees Wage Class)**

7 88. MR. BUTLER incorporates paragraphs 1 through 87 of this operative complaint as if fully
8 alleged herein, and pleads the following on behalf of himself and the Non-Exempt Employees Wage
9 Class against only TCC:

10 89. Labor Code § 210 states, "(a) In addition to, and entirely independent and apart from, any other
11 penalty provided in this article, **every person** who fails to pay the wages of each employee as provided
12 in §§ 201.3, **204, 204b**, 204.1, 204.2, 204.11, 205, 205.5, and **1197.5**, shall be subject to a penalty as
13 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
14 (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
15 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. (b) The penalty
16 shall either be recovered by the employee as a statutory penalty...or by the Labor Commissioner as a
17 civil penalty...(c) An employee is only entitled to either recover the statutory penalty provided for in
18 this section or to enforce a civil penalty as set forth in subdivision (a) of § 2699, but not both, for the
19 same violation.

20 90. Due to TCC's violations of § 204 and § 204(b) (*supra*) and § 1197.5 (*infra*), TCC is subject to
21 penalties under § 210(a).

22 91. MR. BUTLER, on behalf of himself and the Non-Exempt Employees Wages Class, seeks
23 statutory penalties pursuant to Labor Code § 98, but only if such results in more penalties actually
24 recovered by and paid to the Class versus Aggrieved Employees.

25 92. According to Labor Code § 211, a demand is a prerequisite to the bringing of any action under
26 Labor Code § 210 or § 211. MR. BUTLER's original, as well as his, amended PAGA Notice also served
27 as the demand required by Labor Code § 211 in which MR. BUTLER demanded, on behalf of himself
28 and other Aggrieved Employees, that TCC pay the highest calculatable penalties under § 210, as well as
TCC pay all wages due to MR. BUTLER, Aggrieved Employees, and the Class under § 204 and/or §
1197.5 that TCC failed to pay.

SIXTH CAUSE OF ACTION AGAINST TCC ONLY

PAGA Civil Penalties For Labor Code § 206 Violation(s)

1 **(By Aggrieved PAGA Employees Which Includes MR. BUTLER)**

2 93. MR. BUTLER incorporates paragraphs 1 through 92 of this operative complaint as if fully
3 alleged herein, and pleads the following on behalf of himself and Aggrieved Employees against only
4 TCC per Labor Code § 2699.3, as well as § 2699.5 which specifically enumerates § 206 under PAGA:

5 **§ 206(a)**

6 94. Labor Code § 206(a) states, “In case of a dispute over wages, the employer shall pay, without
7 condition and within the time set by this article, all wages, or parts thereof, conceded by him[/her/it] to
8 be due, leaving to the employee all remedies he[/she] might otherwise be entitled to as to any balance
9 claimed. A ‘good faith dispute’ that any wages are due occurs when an employer presents a defense,
10 based in law or fact, which, if successful, would preclude any recovery on the part of the employee...
11 Defenses presented which, under all the circumstances, are unsupported by any evidence, are
12 unreasonable, or are presented in bad faith, will preclude a finding of a ‘good faith dispute’”. 8 C.C.R. §
13 13520(a). On July 29, 2019, MR. BUTLER sent Devin Romanio, HR Business Partner for TCC, an
14 email informing TCC of the minimum 0.75 overtime wages MR. BUTLER undoubtedly knew he was
15 owed because he worked such during his final pay period, but that TCC had not paid him in his final
16 paycheck despite MR. BUTLER asking TCC to correct this. Mr. Romanio did not claim to MR.
17 BUTLER that TCC did not owe him 0.75 hours of overtime pay. Instead, Mr. Romanio—who
18 deliberately consistently ignored TCC employee complaints and inquiries—unsurprisingly ignored MR.
19 BUTLER’s request, which MR. BUTLER, on information and belief, believes was deliberate due to Mr.
20 Romanio’s pattern of behavior. When a person makes a statement in the presence of a party to an action
21 under circumstances that would normally call for a response if the statement were untrue, the statement
22 is admissible for the limited purpose of showing the party’s reaction to it. His silence, evasion, or
23 equivocation may be considered as a tacit admission of the statements made in his presence.” *In re*
Estate of Neilson (1962) 57 Cal.2d 733, 746. Through Mr. Romanio’s evasion and silence, TCC tacitly
conceded TCC owes MR. BUTLER wages of at least 0.75 hours of overtime.

24 95. Under the above circumstances, there is no reasonable defense(s) TCC can present to justify that
25 a good faith dispute exists regarding at least the 0.75 hours of wages due by TCC to MR. BUTLER; no
26 evidence supports such defense(s). In failing to pay MR BUTLER 0.75 hours of overtime, TCC violated
27 Labor Code § 206. On information and belief, MR. BUTLER believes no evidence will support a good
28 faith defense by TCC for its failures to compensate MR. BUTLER and other Non-Exempt Employees
Wages Class members and Aggrieved Employees for the other wages already enumerated within this
operative complaint that TCC failed to pay.

1 96. Furthermore, on March 5, 2015, in LWDA case no. LWDA-CM-301358-17, Barbara Erwin filed
2 a PAGA Notice against Claremont University Consortium (CUC)—the name by which TCC is formerly
3 known—apprising CUC of its unlawful conduct that violated numerous Labor Code sections
4 enumerated within that PAGA Notice. Approximately 2 years and 7 months later, on October 6, 2017,
5 Lance Gregory Leach did the same in LWDA case no. LWDA-CM-339861-17 and the operative
6 complaint for the LEACH lawsuit. These two PAGA claims/case(s), in combination with LEACH's
7 lawsuit, MR. BUTLER's PAGA Notice and MR. BUTLER'S ignored request to Mr. Romanio, TCC's
8 HR, for MR.BUTLER'S final paycheck to be corrected, as well as this action demonstrate TCC cannot
dispute in good faith the fact that TCC owes Aggrieved Employees wages.

9 97. However, to this date, TCC either unreasonably or in bad faith, has yet to pay MR. BUTLER
10 and, on information and belief, has also yet to pay Aggrieved Employees all of their undisputed wages,
11 including but not necessarily limited to minimum, regular, overtime, and/or double time wages;
12 premium wages; reporting time pay; requested but denied sick leave pay; and/or unpaid accrued or
13 should have accrued vacation pay due to (a) working off-the-clock to don and doff their campus safety
14 uniforms and equipment like protective gear including a ballistic vest; (b) being on-call during meal and
15 rest breaks because MR. BUTLER and other Aggrieved Employees did not have a legitimate
16 opportunity to take such uninterrupted, especially employees who were/are Campus Safety Officers,
17 Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible
18 volume but also monitor and respond to radio notices regardless of whether they were on a meal or rest
19 break; and (c) due to TCC's policy, procedure, and/or practice of utilizing an uneven rounding system
20 that resulted in, over a period of time, TCC's failure to properly compensate MR. BUTLER and other
Aggrieved Employees for all the time they actually worked.

21 § 206(b) Penalty Notice

22 98. Under § 206(b) "If, after an investigation and hearing, the Labor Commissioner has determined
23 the validity of any employee's claim for wages, the claim is due and payable within 10 days after receipt
24 of notice by the employer that such wages are due. Any employer having the ability to pay who willfully
25 fails to pay such wages within 10 days shall, **in addition to any other applicable penalty**, pay treble
26 the amount of any damages accruing to the employee as a direct and foreseeable consequence of such
failure to pay."

27 99. Pursuant to Labor Code § 2699(a), "Notwithstanding any other provision of law, any
28 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
Workforce Development Agency **or** any of its departments, divisions, **commissions**, boards, agencies,

1 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action
2 brought by an aggrieved employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Section 2699.3.

4 100. MR. BUTLER, on behalf of himself and other Aggrieved Employees, through his
5 original PAGA Notice and Amended PAGA Notice step/stepped into the role of the Labor Commission
6 to pursue civil penalties on behalf of the LWDA, Labor Commission, and/or the State of California, and
7 through discovery will investigate the claims alleged in this operative complaint. Upon determining the
8 validity of any employee's claim for wages, i.e. MR. BUTLER'S, that of other Non-Exempt Employees
9 Wages Class members and/or other Aggrieved Employees, should TCC fail to pay these employees'
10 wages within 10 days after judgment, MR. BUTLER on behalf of Aggrieved Employees shall motion
11 upon the court to order TCC to pay the penalty of treble the amount of any "damages accruing to"
12 Aggrieved Employees including MR. BUTLER, as a direct and foreseeable consequence of such failure
13 to timely pay such wages.

14 101. According to its most recently filed I.R.S. 990 Form, TCC is an established non-profit
15 corporation employing roughly 450 employees and has net assets worth approximately \$120 million;
16 clearly TCC is able to pay MR. BUTLER and Aggrieved Employees the wages owed to them.

17 102. Due to TCC's violation of Labor Code § 206(a) explained above, TCC is subject to
18 PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2), i.e. the
19 civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
20 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
21 subsequent violation.

22 SEVENTH CAUSE OF ACTION AGAINST ONLY TCC

23 Labor Code § 208 Violation and § 2699(f)(2) Penalties

24 (By Aggrieved PAGA Employees Which Includes MR. BUTLER)

25 103. MR. BUTLER incorporates paragraphs 1 through 102 of this operative complaint as if
26 fully alleged herein, and pleads the following on behalf of himself and Aggrieved Employees against
27 only TCC:

28 104. Labor Code § 208 mandates "Every employee who is discharged shall be paid at the
place of discharge, and every employee who quits shall be paid at the office or agency of the employer
in the county where the employee has been performing labor. **All payments shall be made in the
manner provided by law.**" Given the plain meaning of the mandatory language "[a]ll payments shall be
made in the manner provided by law", California's Legislature did not intent Labor Code § 208 to

1 narrowly pertain only to the place at which an employer pays final wages. Otherwise, California's
2 Legislature would have drafted Labor Code § 208 to state "All payments shall be made in the manner
3 provided by this section" or "All payments shall be made at the location provided by this section."
4 Instead, Labor Code § 208 pertains generally to Chapter 1 of California's Labor Code titled Payment of
5 Wages, i.e. Labor Code §§ 200-273. Therefore, the "manner" of payment encompasses time, place, and
6 accuracy or inaccuracy such as underpayment of wages MR. BUTLER, the Non-Exempt Employees
7 Wages Class, and Aggrieved Employees suffered due to TCC's conduct because the law provides for
8 how payment of wages is done or happens. Although MR. BUTLER does not know whether TCC paid
9 other employees at the appropriate place(s) enumerated in Labor Code § 208, due to the other wage
10 payment(s) violations detailed in this operative complaint, for example §§ 201, 202, 203, 226, etc., TCC
11 nevertheless failed to make all payments "in the manner provided by law", including timely, accurate
12 and complete payments, for example the 0.75 overtime hours for which MR. BUTLER specifically
13 requested payment on July 29, 2019, in addition to the wages owed to MR. BUTLER, other Non-
14 Exempt Employees Wages Class members and applicable Aggrieved Employees already detailed above.

15 105. As a result of failing to provide "all payments" to Aggrieved Employees "in the manner
16 provided by law", TCC violated Labor Code § 208 and is liable to MR. BUTLER and other Aggrieved
17 Employees for attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5, which lists Labor
18 Code § 208. In accordance with § 2699.3(f)(2), the civil penalty is \$100 for each aggrieved employee
per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each
subsequent violation.

19 **EIGHTH CAUSE OF ACTION AGAINST ONLY TCC**

20 **PAGA Civil Penalties For Labor Code § 213 Violation**

21 **(By Aggrieved PAGA Employees Which Includes MR. BUTLER)**

22 106. MR. BUTLER incorporates paragraphs 1 through 105 of this operative complaint as if
23 fully alleged herein, and pleads as follows on behalf of Aggrieved Employees against only TCC
pursuant to Labor Code § 2699.3, as well as § 2699.5 which specifically enumerates § 213 under PAGA:

24 107. Under Labor Code § 213(d), an employer is not prohibited "from depositing wages due
25 or to become due or an advance on wages to be earned in an account in any bank, savings and loan
26 association, or credit union of the employee's choice with a place of business located in this state,
27 provided that the employee has voluntarily authorized that deposit. If an employer discharges an
28 employee or the employee quits, the employer may pay the wages earned and unpaid at the time the
employee is discharged or quits by making a deposit authorized pursuant to this subdivision, **provided**

1 **that the employer complies with the provisions of this article relating to the payment of wages**
2 **upon termination or quitting of employment.”**, i.e. for purposes of this action, Labor Code §201 and
3 § 202 as follows:

4 Labor Code §§ 201: “(a) If an employer discharges an employee, the wages earned and unpaid at
5 the time of discharge are due and payable immediately”;

6 Labor Code §§ 202: (a) If an employee not having a written contract for a definite period quits
7 his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter,
8 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.

9 108. On information add belief, MR. BUTLER believes, due to TCC’s direct deposit
10 Authorization form he and other TCC employees completed, that TCC made direct deposits of final
11 wages to Aggrieved Employees who quit or TCC discharged, however such deposits did not comply
12 with Labor Code §§ 201 and § 202 as explained above under the first and second causes of actions
13 (*supra*) because TCC failed to pay the wages earned and unpaid at the time TCC discharged Aggrieved
14 Employees or Aggrieved Employees quit.

15 109. As a result, TCC violated Labor Code § 213 and is liable to Aggrieved Employees for
16 attendant PAGA civil penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3
17 subdivision (f)(2), i.e. the civil penalty is \$100 for each aggrieved employee per pay period for the initial
violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

18 **NINTH CAUSE OF ACTION AGAINST ONLY TCC**

19 **Labor Code § 225.5 Civil Penalty Under PAGA For Violating Provisions Of § 223**

20 **(By Aggrieved PAGA Employees Which Includes MR. BUTLER)**

21 110. MR. BUTLER incorporates paragraphs 1 through 109 of this operative complaint as if
22 fully alleged herein, and pleads the following on behalf of Aggrieved Employees against only TCC:

23 111. Under Labor Code § 225.5, “In addition to, and entirely independent and apart from, any
24 other penalty provided in this article, every person who unlawfully withholds wages due any employee
25 in violation of § 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any
26 initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each
27 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
28 to pay each employee, plus 25 percent of the amount unlawfully withheld. The penalty shall be
recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or
in an independent civil action. The action shall be brought in the name of the people of the State of

1 California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of
2 the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into
3 a fund within the Labor and Workforce Development Agency dedicated to educating employers about
4 state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General
5 Fund. MR. BUTLER and Aggrieved Employees, in the name of the people of the State of California and
6 the Labor Commissioner, seek the civil penalty under § 225.5 because, as explained above, TCC
7 violated § 223 (*supra*).

8 112. This action is also to recover these civil penalties in an independent civil action brought
9 in the name of the people of the State of California and the Labor Commissioner with 12.5% of the
10 penalty recovered paid into a fund within the LWDA dedicated to educating employers about state labor
11 laws, and the remainder, minus MR. BUTLER's and other Aggrieved Employees' 25% under the
12 PAGA, paid into the State Treasury to the credit of the General Fund.

13 **TENTH CAUSE OF ACTION AGAINST DEFENDANTS**

14 **Labor Code § 226(a) Violation and § 226(e) Remedy**

15 **(By MR. BUTLER, the Wage Statement Class, and Aggrieved Employees)**

16 113. MR. BUTLER incorporates paragraphs 1 through 112 of this operative complaint as if
17 fully alleged herein, and pleads the following on behalf of himself, the Wage Statement Class, and other
18 Aggrieved Employees against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds liable
19 any employer or other person—who is an owner, director, officer, or managing agent of the employer—
20 acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 226.

21 **Labor Code § 226(a) Violation**

22 114. Under Labor Code § 226(a) “Every employer shall, semimonthly or at the time of each
23 payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft,
24 or voucher paying the employee's wages, or separately when wages are paid by personal check or cash,
25 an **accurate** itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
26 the employee...(4) all deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
28 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
social security number or an employee identification number other than a social security number, (8) the
name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during
the pay period and the corresponding number of hours worked at each hourly rate by the employee and
...The deductions made from payment of wages shall be recorded in ink or other indelible form, properly

1 dated, showing the month, day, and year, and a copy of the statement and the record of the deductions
2 shall be kept on file by the employer for at least three years at the place of employment or at a central
3 location within the State of California. For purposes of this subdivision, “copy” includes a duplicate of
4 the itemized statement provided to an employee or a computer-generated record that accurately shows
5 all of the information required by this subdivision.”

6 115. MR. BUTLER’S and, on information and belief, that of the Wage Statement Class
7 members’ and other Aggrieved Employees’ pay records reconciled against their Kronos time records,
8 plus on-call work though meal and rest breaks, as well as off-the-clock work for donning and doffing
9 their mandatory equipment and uniforms, combined with TCC’s use of an unlawful rounding system
10 that resulted in, over a period of time, DEFENDANTS’ failure to compensate MR. BUTLER, the Wage
11 Statement Class, and other Aggrieved Employees properly for all the time they actually worked prove
12 DEFENDANTS failed to provide MR. BUTLER, other Aggrieved Employees, and the Wage Statement
13 Class with accurately written itemized statements showing “(1) gross wages earned, (2) total hours
14 worked by the employee...(5) net wages earned,...(8) the name and address of the legal entity that is the
15 employer...[and] (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee” because DEFENDANTS failed to
17 accurately pay MR. BUTER, other Aggrieved Employees, the Non-Exempt Employees Wages Class
18 and the Wage Statement Class all earned and unpaid wages, including but not necessarily limited to
19 minimum, regular, overtime, and/or double time wages; premium wages; reporting time pay; requested
20 but denied sick leave pay; and/or unpaid accrued or should have accrued vacation pay due to (a)
21 working off-the-clock to don and doff their campus safety uniforms and equipment like protective gear
22 including a ballistic vest; (b) being on-call during meal and rest breaks because MR. BUTLER, other
23 Aggrieved Employees, and the Premium Pay Class did not have a legitimate opportunity to take such
24 uninterrupted, especially employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or
25 Dispatchers expected to not only keep their radios powered on with audible volume but also monitor and
26 respond to radio notices regardless of whether they were on a meal or rest break; and (c) due to TCC’s
27 policy, procedure, and/or practice of utilizing an unlawful rounding system that resulted in, over a period
28 of time, DEFENDANTS’ failure to compensate MR. BUTLER, other Aggrieved Employees, the Non-
Exempt Employees Wages Class and the Wage Statement Class properly for all the time they actually
worked.

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117. According to Labor Code § 226(e)(2)(B) “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a). (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period...(iii) The name and address of the employer...(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

119. MR. BUTLER, the Wage Statement Class, and other Aggrieved Employees, have suffered injury pursuant to § 226(e)(2)(B) because, per § 226(e)(2)(B)(i), TCC failed “to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of” § 226(a) (*supra*) and MR. BUTLER, other Aggrieved Employees, and the Wage Statement Class cannot promptly and easily determine from the wage statement alone the amount of the gross wages and/or net wages paid or what should have been paid to them during the pay period or other information required to be provided on the itemized wage statement pursuant § 226(a), specifically “(1) gross wages earned, (2) total hours worked by the employee...(5) net wages earned,..(8) the name and address of the legal entity that is the employer...[and] (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

1 120. MR. BUTLER, the Wage Statement Class, and other Aggrieved Employees must refer
2 to other documents and information to reconstruct the time they worked to account for their unpaid
3 work, including but not necessarily limited to (1) their inaccurate time (clock-in and clock-out) records;
4 (2) the average amount of time it took/takes MR. BUTLER, other Aggrieved Employees, and the Non-
5 Exempt Employees Wages Class and Wage Statement Class members to don and doff their respective
6 uniforms; (3) on-call work during meal and rest breaks due to not having a legitimate opportunity to take
7 such uninterrupted, especially Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers
8 expected to not only keep their radios powered on with audible volume but also to monitor and respond
9 to radio notices regardless of whether they were on a meal or rest break; and (4) determine the amount
10 of time TCC's rounding system, over a period of time, shorted MR. BUTLER, other Aggrieved
11 Employees, and the Wage Statement Class time and thus compensation.

12 121. Furthermore, MR. BUTLER, other Aggrieved Employees, and the Wage Statement
13 Class have suffered injury pursuant to § 226(e)(2)(B) because, per Labor Code § 226(e)(2)(B)(iii),
14 DEFENDANTS failed to list the legal name of the employer. The name of the employer listed on MR.
15 BUTLER's, and on information and belief, the other Aggrieved Employees' and that of the Wage
16 Statement Class's itemized wage statements is "The Claremont Colleges Services" or "TCCS" when the
17 current legal name of the employer according to the most recently filed Statement Of Information filed
18 with California's Secretary of State is "The Claremont Colleges, Inc." (TCC) while the former name of
19 the employer was "Claremont University Consortium" (CUC).

20 122. MR. BUTLER, other Aggrieved Employers, and the Wage Statement Class cannot
21 "promptly and easily determine" the employer's, i.e. TCC's, name because they had to, like other
22 reasonable persons would have to, reference other documents or information because the employer's
23 name is not readily ascertainable without referring to public court records and/or to California Secretary
24 of State's records. For this case, the wage statements of MR. BUTLER, other Aggrieved Employees,
25 and the Wage Statement Class all demonstrate TCCS is the employer even though TCC actually is. The
26 true identity of the actual employer, i.e. TCC not TCCS, is not information a reasonable person would
27 be able to readily ascertain without reference to other documents or information. MR. BUTLER'S
28 attorney had to refer to the California's Secretary of State's Statement of Information for TCC and/or the
Leach lawsuit to determine the legal identity of TCCS is TCC. Thus, the true identity of the employer is
not promptly and easily determined, causing injury to MR. BUTLER, other Aggrieved Employees, and
the Wage Statement Class.

1 123. Therefore, MR. BUTLER and the Wage Statement Class are entitled to the appropriate
2 remedy from DEFENDANTS under Labor Code § 226(e)(1).

3 124. In addition to § 226(e) statutory penalties, TCC is also liable to MR. BUTLER and
4 other Aggrieved Employees for attendant PAGA penalties under § 226.3 (*infra*) for violating § 226(a).

5 **ELEVENTH CAUSE OF ACTION AGAINST TCC DUE TO DEVIN ROMANIO**

6 **Labor Code § 226(c) Violation and Labor Code § 226(f) Penalty**

7 **(By Aggrieved PAGA Employees Which Includes MR. BUTLER)**

8 125. MR. BUTLER incorporates paragraphs 1 through 124 of this operative complaint as if
9 fully alleged herein, and pleads the following on behalf of himself and any other Aggrieved Employee(s)
against TCC due to Devin Romanio's actions.

10 126. Under Labor Code § 226(b) "An employer that is required by this code or any
11 regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford
12 current and former employees the right to inspect or receive a copy of **records pertaining to their**
13 **employment**, upon reasonable request to the employer..." TCC is an employer subject to Labor Code §
14 226(a). According to the plain language of the statute, Labor Code § 226(b) does not require employees
to specifically request payroll records, only "records pertaining to their employment".

15 127. An employer who receives a written or oral request to inspect or receive a copy of
16 records pursuant to § 226(b) pertaining to a current or former employee shall comply with the request as
17 soon as practicable, but no later than 21 calendar days from the date of the request. § 226(c).

18 128. Pre-litigation, on Monday, July 29, 2019 at 11:00 am, MR. BUTLER emailed Devin
19 Romanio, TCC's HR Business Partner, informing both Mr. Romanio and TCC through Mr. Romanio of
20 the following pay issue and a reasonable request to receive a copy of records pertaining to his
21 employment: "Sir, Thank you, I received the check this morning; however, I did notice a discrepancy.
22 Attached is a screen shot of my worked hours via Kronos and a screen shot of my pay slip. My worked
23 hours are 74.15 hours. My pay slip states 72.07 regular hours and 1.33 overtime hours for a total of 73.4
24 hours. Time discrepancy - $74.15 - 73.4 = 0.75$ overtime hours. May the pay discrepancy be corrected
25 please? In addition, may I have a copy of my employee file TCCS has on my employment to include all
annual performance evaluations? Thank you in advance."

26 129. Not only did TCC and Mr. Romanio fail to comply with this request within 21 calendar
27 days, Mr. Romanio and TCC through Mr. Romanio, completely ignored MR. BUTLER's request for "a
28 copy of [his] employee file TCCS has on [his] employment to include all annual performance
evaluations", i.e. utterly disregarded MR. BUTLER'S right under § 226(b). Thus, Mr. Romanio and

1 TCC through Mr. Romanio, violated or caused to be violated Labor Code § 226, specifically subsections
2 (b) and (c). Both TCC as MR. BUTLER’S former employer and Mr. Romanio as a TCC managing agent
3 as explained *supra* (see paragraph 23 which is incorporated herein by reference) may be held liable as
4 the employer for such violation under Labor Code § 558.1.

5 130. Given his own experience of being ignored by TCC and Mr. Romanio in reasonably
6 requesting records under Labor Code § 226(b) and § 1198.5 (infra), MR. BUTLER believes TCC also
7 likely violated the §§ 226(b) and (c) rights of other Aggrieved Employees.

8 131. Even if other Aggrieved Employees have not requested employee records under § 226(b)
9 and § 226(c), TCC and Mr. Romanio are nevertheless liable under Labor Code § 558.1 to MR. BUTLER
10 for the statutory penalty pursuant to Labor Code § 226(f), as well as attorney’s fees under § 226(h), for
11 non-compliance with § 226(b) and § 226(c).

12 132. Under § 226(f), “A failure by an employer to permit a current or former employee to
13 inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or
14 former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty
15 from the employer.”

16 133. Under § 226(h), “An employee may also bring an action for injunctive relief to ensure
17 compliance with this section and is entitled to an award of costs and reasonable attorney’s fees.”
18 Therefore, MR. BUTLER seeks injunctive relief ordering TCC and Mr. Romanio to afford MR.
19 BUTLER, other former employees, and current employees the right to inspect or receive a copy of
20 records pertaining to their employment, upon reasonable request to TCC.

21 134. TCC is also liable for civil penalties per Labor Code § 2699.3 (PAGA) due to its
22 violation of § 226(b) and (c).

23 **TWELFTH CAUSE OF ACTION AGAINST ONLY TCC**

24 **Civil Penalty Under Labor Code § 226.3 For § 226(a) Violation**

25 **(Aggrieved PAGA Employees Which Includes MR. BUTLER)**

26 135. MR. BUTLER incorporates paragraphs 1 through 134 of this complaint as if fully alleged
27 herein, and pleads the following on behalf of himself and other Aggrieved Employees against only TCC:

28 136. Under Labor Code § 226.3 “Any employer who violates subdivision (a) of § 226 shall
be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
citation, for which the employer fails to provide the employee a wage deduction statement or fails to

1 keep the records required in subdivision (a) of § 226. The civil penalties provided for in this § are in
2 addition to any other penalty provided by law...”

3 137. Though TCC provided MR. BUTLER, other Aggrieved Employees, and the Wage
4 Statement Class members with wage deduction statements, these statements were not code compliant.
5 Thus, TCC “fail[ed] to keep the records required by subdivision (a) of § 226” because TCC’s § 226
6 records are inaccurate as already explained under the TENTH cause of action (*supra*) enumerated in this
7 operative complaint.

8 138. Therefore MR. BUTLER, on behalf of himself and other Aggrieved Employees, seeks
9 PAGA civil penalties under § 226.3 pursuant to § 2699.3(c).

10 **THIRTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

11 **Labor Code § 226.7(b) Violation and § 226.7(c) Premium Pay**

12 **(By MR. BUTLER, Aggrieved PAGA Employees, and the Premium Pay Class)**

13 139. MR. BUTLER incorporates paragraphs 1 through 138 of this operative complaint as if
14 fully alleged herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the
15 Premium Pay Class against DEFENDANTS who may be held liable under § 558.1(a), which states in
16 relevant part “Any employer or other person acting on behalf of an employer, who violates, or causes to
17 be violated, any provision regulating minimum wages or hours and days of work in any order of the
18 Industrial Welfare Commission, or violates, or causes to be violated, Section...226.7...may be held
19 liable as the employer for such violation.

20 140. According to Labor Code § 226.7(b), “An employer shall not require an employee to
21 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
22 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
23 Standards Board, or the Division of Occupational Safety and Health.”

24 141. Under Labor Code § 226.7(c) “If an employer fails to provide an employee a meal or rest
25 or recovery period in accordance with a state law, including, but not limited to, an applicable statute or
26 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety
27 and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay
28 the employee one additional hour of pay at the employee’s regular rate of compensation for each
workday that the meal or rest or recovery period is not provided.”

142. Under Labor Code § 226.7(d), “A rest or recovery period mandated pursuant to a state
law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the
Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of

Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

143. Under Labor Code § 226.7(e), “This section shall not apply to an employee who is exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

144. Though MR. BUTLER was a security guard licensed by California’s Bureau of Security and Investigative Services from August 1, 2013 to August 31, 2019, the provisions of Labor Code § 226.7(f)² should not apply to this action because TCC does not appear to be registered pursuant to the Private Security Services Act (Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code) as a private patrol operator. Even if TCC is so registered, on information and belief, TCC’s employees are not covered by a valid collective bargaining agreement in compliance with Labor Code § 226.7(f)(3). Moreover, subdivision (f) of Labor Code § 226.7 “does not apply to existing cases filed before January 1, 2021.” This action was filed before January 1, 2021, therefore Labor Code § 226.7(f) is inapplicable.

145. In seeking the statutory penalty under Labor Code § 226.7(c), this action is similar to *Augustus v. ABM Security Services, Inc.*, in which California’s Supreme Court confirmed Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest periods. The same is true of meal periods. “[E]mployers must relieve their employees of all duties and relinquish any control over how employees spend their break time.” See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-1039 and *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 259. Employee meal and rest periods are to be duty free, timely, and uninterrupted.

146. Similar to *ABM Security Services*, TCC failed to provide MR. BUTLER, other Aggrieved Employees, and the Premium Pay Class with legitimate opportunities to take Labor Code compliant meal (§ 512) and rest (IWO 4-2001 § 12) breaks each workday because meal and rest breaks were

² Labor Code § 226.7(f)(1) states, “An employee employed in the security services industry as a security officer who is registered pursuant to the Private Security Services Act (Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code) and who is employed by a private patrol operator registered pursuant to that chapter, may be required to remain on the premises during rest periods and to remain on call, and carry and monitor a communication device during rest periods. If a security officer’s rest period is interrupted, the security officer shall be permitted to restart the rest period anew as soon as practicable. The security officer’s employer satisfies that rest period obligation if the security officer is then able to take an uninterrupted rest period. If on any workday a security officer is not permitted to take an uninterrupted rest period of at least 10 minutes for every four hours worked or major fraction thereof, then the security officer shall be paid one additional hour of pay at the employee’s regular base hourly rate of compensation. Labor Code § 226.7(f)(2) states, “For purposes of this subdivision, the term “interrupted” means any time a security officer is called upon to return to performing the active duties of the security officer’s post prior to completing the rest period, and does not include simply being on the premises, remaining on call and alert, monitoring a radio or other communication device, or all of these actions.”

1 interrupted, late, and/or missed. TCC expected MR. BUTLER, Aggrieved Employees, and the Premium
2 Pay Class who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to stay on
3 TCC premises during rest breaks, remain on call and alert during meal and rest breaks, and monitor a
4 radio or other communication device during meal and rest breaks. According to page 8 of TCC's
5 Campus Safety Training Manual on Grooming – Uniform – Equipment, under **Radio Hand-Mic/
6 Earpiece** pertaining to EQUIPMENT, "Unless otherwise directed, a department issued two-way radio
7 hand-mic and earpiece shall be worn at all times. Personnel assigned to Dispatch Center are exempt
8 from wearing the earpiece, while at Dispatch."

9 147. Moreover, TCC expected MR. BUTLER, Aggrieved Employees, and the Premium Pay
10 Class who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep
11 their radios powered on with audible volume but also respond to radio notices regardless of whether they
12 were on a rest or meal break; in other words, they were called upon to return to performing the active
13 duties of the security officer's post prior to completing their meal or rest period.

14 148. As another result, TCC violated Cal. Code Regs., tit. 8, § 11040, subdivision 7(A)(3),
15 which states "Every employer shall keep accurate information with respect to each employee including
16 the following: (3) Time records showing when the employee begins and ends each work period. *Meal
17 periods, split shift intervals and total daily hours worked shall also be recorded* [emphasis added]. Meal
18 periods during which operations cease and authorized rest periods need not be recorded."

19 149. As another result, DEFENDANTS are liable to the Premium Pay Class, including MR.
20 BUTLER, for "one additional hour of pay at the employee's regular rate of compensation for each
21 workday that the meal or rest or recovery period [was/]is not provided." This includes Class members
22 who are part of the Premium Pay Class who worked part-time and were entitled to meal and/or
23 Labor Code compliant meal and/or rest breaks but did not received from TCC a legitimate
24 opportunity to take such. Additionally, this includes Class members who are part of the Premium
25 Pay Class who worked over eight hours in a workday prior to the date TCC implemented the
26 results from its August 14, 2020 alternative workweek election pursuant to Labor Code § 511
27 and did not have a legitimate opportunity to take a single meal period of net 30-minutes and/or
28 two 10-minutes net rest breaks timely and uninterrupted. This also includes Class members who
are part of the Premium Pay Class who work/ed no more than 10 hours in a workday after TCC
implemented an alternative workweek schedule consisting of four days, ten hours per day, and
did not have a legitimate opportunity to take a single meal period of net 30-minutes and/or two
10-minutes net rest breaks timely and uninterrupted. Lastly, this also includes Class members

1 who are part of the Premium Pay Class who work/ed over 10 hours in a workday after TCC
2 implemented an alternative workweek schedule consisting of four days, ten hours per day, and
3 did not have a legitimate opportunity to take a two meal periods of net 30-minutes unless a
4 valid meal period waiver exists and/or three 10-minutes net rest breaks timely and
5 uninterrupted.

6 150. DEFENDANTS are also liable to MR. BUTLER and other Aggrieved Employees for
7 attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 pursuant to § 2699.3(f)(2), i.e.
8 the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
9 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
10 subsequent violation.

11 **FOURTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

12 **Labor Code § 510(a) Violation**

13 **(By MR. BUTLER, Aggrieved PAGA Employees, and the Non-Exempt Employees Wages Class)**

14 151. MR. BUTLER incorporates paragraphs 1 through 150 of this complaint as if fully alleged
15 herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Non-Exempt
16 Employees Wages Class against DEFENDANTS.

17 152. Per Labor Code § 510(a), “Eight hours of labor constitutes a day’s work. Any work in
18 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the
19 first eight hours worked on the seventh day of work in any one workweek shall be compensated at the
20 rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess
21 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
22 an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
23 compensated at the rate of no less than twice the regular rate of pay of an employee...”

24 153. TCC operates 24 hour per day, 7 days per week and scheduled MR. BUTLER, other
25 Aggrieved Employees, and the Non-Exempt Employees Wages Class to worked various full-time and
26 part-time shifts.

27 154. MR. BUTLER, other Aggrieved Employees, and Non-Exempt Employees Wages Class
28 were expected to begin working promptly, which according to MR. BUTLER meant being dressed in
uniform with radios, protective gear and other equipment, and ready for briefing the moment their
scheduled shift began. According to page 5 of TCC’s Campus Safety Training Manual on Grooming –
Uniform – Equipment, under Additional Guidelines pertaining to UNIFORM, “You [meaning Campus
Safety personnel] must be fully dressed and properly groomed **from the moment you clock in**”,

1 including equipment. According to page 7 of TCC’s Campus Safety Training Manual on Grooming –
2 Uniform –Equipment, under EQUIPMENT, “Campus Safety personnel are responsible for the
3 safekeeping and security of all department-issued equipment, such as two-way radio and flashlight in
4 their possession.” Under the header **Duty Belt/Gear**, “*Unless otherwise directed, personnel are to wear*
5 *the department-issued duty belt and authorized gear at all times while on duty. The placement of the*
6 *gear items on the duty belt shall be in the following order, looking at the duty belt from left to right: Belt*
7 *Keeper—Key Pouch—Baton—Radio—Belt Keeper—Gloves—Belt Keeper—Handcuffs—Flashlight—*
8 *Mace—Metal Key Hook—Belt Keeper.* Under **Special Note**, “Unless otherwise directed by Direct of
9 Campus Safety, personnel may not take the department-issued baton and pepper spray off campus and
10 must secure these items in their employee locker space upon departure from campus.”

11 155. As evidenced by TCC’s Campus Safety Training Manual, TCC intended for its Campus
12 Safety Personnel to don their uniforms and equipment off-the-clock because Campus Safety personnel
13 “must be fully dressed and properly groomed **from the moment [they] clock in.**” Campus Safety
14 Personnel includes but is not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and
15 Dispatchers who, like MR. BUTLER, are Aggrieved Employees and members of the Non-Exempt
16 Employees Wages Class. Likewise, TCC expected MR. BUTLER, Aggrieved Employees and the Non-
17 Exempt Employees Wages Class to doff their uniform off-the-clock, including their duty belt and gear
18 for “personnel may not take the department-issued baton and pepper spray off campus and must secure
19 these items in their employee locker space upon departure from campus.” Thus, TCC intentionally did
20 not pay MR. BUTLER, Aggrieved Employees, and the Non-Exempt Employees Wages Class for
21 donning and doffing their uniforms and equipment, off-the-clock work that remains uncompensated to
22 this day.

23 156. Additionally, TCC’s policy, procedure, and/or practice of utilizing an uneven rounding
24 system resulted in, over a period of time, TCC’s failure to compensate MR. BUTLER, other Aggrieved
25 Employees, and the Non-Exempt Employees Wages Class properly for all the time they actually
26 worked, including overtime.

27 157. As a result, TCC is liable to MR. BUTLER and the Non-Exempt Employees Wages Class
28 for unpaid wages, including regular wages and overtime wages for any member of the Non-Exempt
29 Employees Wages Class who worked over 8 hours in a workday, or over 10 hours in a workday for
30 those subject to TCCs alternative workweek schedule explained *infra*.

158. TCC is also liable to MR. BUTLER and other Aggrieved Employees for attendant PAGA
penalties pursuant to Lab Code §2699.3(a) and § 2699.5.

Aggrieved Employees Whom TCC Misclassified As Salary Exempt

159. Generally, California workers are statutorily entitled to overtime compensation for working in excess of an eight-hour workday or in excess of a 40-hour workweek, unless they are properly classified as falling within one of the narrow exemption categories. See Labor Code § 510 and § 515. The Industrial Wage Commission (IWC) promulgated numerous wage orders—one concerning the state minimum wage and the balance covering workers employed in various industries. See California Code of Regulations, title 8, §§ 11000-11170.

160. The California Industrial Welfare Commission Orders apply to all employees in the State of California except those specifically exempted.

161. IWC wage order No. 4-2001 (Wage Order 4), codified at § 11040, governs workers employed in the security industry such as the Campus Safety Officers, Corporals, Sergeants, and Dispatchers at issue in this action.

162. Workers employed in an executive, administrative or professional capacity are exempt from sections 3 through 12 of Wage Order 4, which include provisions concerning overtime pay, meal and rest periods, and related recordkeeping requirements, among other things. Cal. Code Regs., tit. 8, § 11040, subd. 1.(A).

163. Exemptions are narrowly construed against the employer and their application is limited to those employees plainly and unmistakably within their terms.” [Citation]. *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal. App. 4th 555, 562.

164. “The assertion of an exemption from the overtime laws is an affirmative defense and the employer bears the burden of proving the employee’s exemption.” *Del Thibodeau v. ADT Security Services* (2018) 3:16-cv-02680-GPC-AGS (S.D. California) citing *Nordquist*, 32 Cal. App. 4th at 562.

165. In order for an employee to legally be exempt from California’s overtime and double time compensation laws, both a “duties test” and a “salary test” apply. The duties test focuses on the duties actually performed, not on the job title or on the duties that an employer/joint employers write(s) into a job description. “No bright-line rule can be established classifying everyone with a particular job title as per se exempt or nonexempt—the regulations identify job duties, not job. “A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee’s salary and duties meet the requirements of the regulations...” Exemption depends “upon what an employee actually does on the job”. Exemption must be based on how an employee actually spends his or her time, not on an idealized job description.

Job Duties & Salary Test

166. According to IWO No. 4-2001 1.(A), “in determining whether an employee’s duties meet the test to qualify for [the Executive] exemption, ...A person employed in an executive capacity means any employee:

(a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; **and**

(b) Who customarily and regularly directs the work of two or more other employees therein; **and**

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; **and**

(d) Who customarily and regularly exercises discretion and independent judgment; **and**

(e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. §§ 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer’s realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code § 515(c) as 40 hours per week.”

Misclassified As Exempt Campus Safety Sergeants & Managerial Dispatch Equivalents

167. Although MR. BUTLER started as and remained an hourly-paid employee throughout his employment with TCC and thus TCC did not misclassify MR. BUTLER, the community of interest requirement for certification does not mandate that class members’ claims be uniform or identical. MR. BUTLER’S theories of liability does not depend on class members having identical claims, nor does the law of class certification require such. (*Vasquez, supra*, 4 Cal.3d at p. 809, 94 Cal.Rptr. 796, 484 P.2d 964 [a community of interest does not depend upon an identical recovery”].) *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. According to MR. BUTLER, TCC pays and classifies Campus Safety Sergeants and their managerial counterparts in Dispatch as salary exempt employees.

1 These misclassified as salary-exempt Aggrieved Employees do not “customarily and regularly exercise
2 discretion and independent judgment” because these Aggrieved Employees’ actions, conduct, judgment,
3 and thoughts are governed by TCC’s policies, for example TCC’s General Orders. These Aggrieved
4 Employees were also outranked by Lieutenants and then Captains, whose judgment these Campus
5 Safety Sergeants and their counterparts in Dispatch had to follow. According to MR. BUTLER, these
6 misclassified as salary-exempt Aggrieved Employees definitely lacked “the authority to hire or fire other
7 employees”. The “suggestions and recommendations as to the hiring or firing and as to the advancement
8 and promotion or any other change of status of other employees” by these misclassified as salary-
9 exempt Aggrieved Employees would not be “given particular weight”. These misclassified as salary-
10 exempt Aggrieved Employees were outranked by Lieutenants and then Captains, whose “suggestions
11 and recommendations as to the hiring or firing and as to the advancement and promotion or any other
12 change of status of other employees” would overrule that of Campus Safety Sergeants and their
13 counterparts in Dispatch. These misclassified as salary-exempt Aggrieved Employees therefore did not
14 primarily engaged in duties which meet the test of the exemption. Moreover, Campus Safety Sergeants
15 were not primarily engaged in the duties of exemption because they spent a minimum of 55% to
16 approximately 80% of their time routinely patrolling as the Corporals and Campus Safety Officers did.

17 168. Consequently, DEFENDANTS violated Labor Code § 510 and are liable for earned but
18 unpaid overtime pay to misclassified employees, including but not necessarily limited to Campus
19 Safety Sergeants.

20 169. Having violated Labor Code § 510, DEFENDANTS are also liable to MR. BUTLER and
21 other Aggrieved Employees for attendant PAGA penalties pursuant to Labor Code § 2699.3(a) and
22 § 2699.5 in the amounts specified per § 558(a).

23 170. Under Labor Code § 558(a) “Any employer or other person acting on behalf of an
24 employer who violates, or causes to be violated, a section of this chapter [§§ 500-558.1] or any
25 provision regulating hours and days of work in any order of the Industrial Welfare Commission [IWO 4-
26 2001] shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
27 each underpaid employee for each pay period for which the employee was underpaid in addition to an
28 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. (3) Wages recovered pursuant to this
section shall be paid to the affected employee.

1 **FIFTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

2 **Labor Code § 511 Violation**

3 **(Aggrieved PAGA Employees Only)**

4 171. MR. BUTLER incorporates paragraphs 1 through 170 of this complaint as if fully alleged
5 herein, and pleads the following on behalf of other Aggrieved Employees and the Non-Exempt
6 Employees Wages Class against Defendants:

7 172. Under Labor Code § 511(a), “Upon the proposal of an employer, the employees of an
8 employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected
9 employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the
10 affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an
11 alternative workweek schedule shall be deemed adopted *only if* it receives approval in a secret ballot
12 election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly
13 scheduled alternative workweek proposed by an employer for adoption by employees may be a single
14 work schedule that would become the standard schedule for workers in the work unit, or a menu of work
15 schedule options, from which each employee in the unit would be entitled to choose. Notwithstanding
16 subdivision (c) of § 500, the menu of work schedule options may include a regular schedule of eight-
17 hour days that are compensated in accordance with subdivision (a) of § 510. Employees who adopt a
18 menu of work schedule options may, with employer consent, move from one schedule option to another
19 on a weekly basis.

20 173. According to a letter received by the Division of Labor Standards Enforcement
21 (DLSE) on September 9, 2020 that was signed by Devin Romanio, TCC’s Senior Human Resources
22 Business Partner, “Pursuant to Labor Code section 511 and the pertinent IWC Wage Order, this letter
23 provides notice [to the DLSE] of the results of [TCC’s] alternative workweek election, which provides
24 for a weekly four day, ten hours per day schedule applicable to affected employees in the Campus Safety
25 Department working at The Claremont Colleges, Inc., a company providing a range of shared services
26 for the Claremont Colleges, located at 101 South Mills Avenue, Claremont, CA 91711-5053. A secret
27 ballot election was held on August 14, 2020, for the purpose of deciding whether employees would
28 adopt the above-described alternative work schedule (four ten work schedule). The results of the secret
ballot election were as follows: YES: 26; NO: 2; SIZE OF WORK UNIT: 28. On July 16th & 17th 2020
(*which must be a minimum of 14 days prior to the election*), a meeting with the affected employees was
held, as required by law, for the purpose of explaining the effects of the new work schedule(s) on
employee hours and pay, including benefits.”

1 174. Labor Code § 511(b) states, “An affected employee working longer than eight hours but
2 not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this
3 section shall be paid an overtime rate of compensation of no less than one and one-half times the regular
4 rate of pay of the employee for any work in excess of the regularly scheduled hours established by the
5 alternative workweek agreement and for any work in excess of 40 hours per week.”

6 175. Although MR. BUTLER ceased working for TCC prior to the date it adopted its
7 alternative 4/10 workweek³, given his own experience in working overtime of ten (10) to fifteen (15)
8 minutes every shift/workday to don and doff his required uniform, protective gear and other equipment
9 but not compensated for such, on information and belief, MR. BUTLER believes other Aggrieved
10 Employees and the Non-Exempt Employees Wages Class subject to TCC’s alternative workweek
11 schedule continued to work off-the-clock to don and doff their uniforms, protective gear and other
12 equipment.

13 176. Consequently, DEFENDANTS violated Labor Code § 511 and are liable for unpaid
14 overtime pay to Non-Exempt Employees Wages Class members subject to TCC’s alternative workweek
15 schedule.

16 177. To maintain this action under PAGA, MR. BUTLER does/did not have to be employed
17 by TCC and governed by its alternative workweek schedule. PAGA “allows an “aggrieved employee”—
18 a person affected by at least one Labor Code violation committed by an employer—to pursue penalties
19 for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA,*
20 *Inc.* (2018) H042852.

21 178. Having violated Labor Code § 511, DEFENDANTS are also liable to
22 Aggrieved Employees for attendant PAGA penalties pursuant to Labor Code § 2699.3(a) and
23 § 2699.5 in the applicable amount(s) specified per § 558(a), i.e. (1) For any initial violation, fifty dollars
24 (\$50) for each underpaid employee for each pay period for which the employee was underpaid in
25 addition to an amount sufficient to recover underpaid wages or (2) For each subsequent violation, one
26 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was
27 underpaid in addition to an amount sufficient to recover underpaid wages.

28 ///

³ Although MR. BUTLER started as and remained an hourly-paid employee throughout his employment with TCC and thus TCC did not misclassify MR. BUTLER, the community of interest requirement for certification does not mandate that class members’ claims be uniform or identical. MR. BUTLER’S theories of liability does not depend on class members having identical claims, nor does the law of class certification require such. (*Vasquez, supra*, 4 Cal.3d at p. 809, 94 Cal.Rptr. 796, 484 P.2d 964 [a community of interest does not depend upon an identical recovery]). *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.

1 **SIXTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

2 **Labor Code § 512 Meal Period Violations & § 226.7(c) Pay**

3 **(By MR. BUTLER, the Premium Pay Class, and Aggrieved PAGA Employees)**

4 179. MR. BUTLER incorporates paragraphs 1 through 178 of this complaint as if fully alleged
5 herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Premium Pay
6 Class against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds liable any employer or
7 other person—who is an owner, director, officer, or managing agent of the employer—acting on behalf
8 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
9 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be
10 violated, Sections...226.7..., may be held liable as the employer for such violation.

11 180. Under Labor Code § 512(a), “An employer may not employ an employee for a work
12 period of more than five hours per day without providing the employee with a meal period of not less
13 than 30 minutes, except that if the total work period per day of the employee is no more than six hours,
14 the meal period may be waived by mutual consent of both the employer and employee. An employer
15 may not employ an employee for a work period of more than 10 hours per day without providing the
16 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
17 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and
18 the employee only if the first meal period was not waived.”

19 181. As noted above, TCC operates 24 hour per day, 7 days per week and scheduled MR.
20 BUTLER, other Aggrieved Employees, and the Premium Pay Class to worked various full-time and
21 part-time shifts. Though MR. BUTLER, other Aggrieved Employees, and the Premium Pay Class
22 clocked out for a 30-minute meal period, TCC did not allow MR. BUTLER, Aggrieved Employees, and
23 the Premium Pay Class to turn off their radios.

24 182. This particular PAGA penalty and premium pay, or rather the reason for such invokes
25 the holding in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, in which California’s
26 Supreme Court confirmed Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-
27 call rest periods. The same is true of meal periods. “...[E]mployers must relieve their employees of all
28 duties and relinquish any control over how employees spend their break time.” Employee meal and rest
periods are to be duty-free uninterrupted and timely. *Id.* at 259.

183. Similar to *ABM Security Services*, TCC failed to provide MR. BUTLER, other
Aggrieved Employees, and the Premium Pay Class with legitimate opportunities to take uninterrupted
meal periods each workday because meal periods were interrupted by the requirement to monitor radios.

1 184. TCC expected MR. BUTLER, Aggrieved Employees, and the Premium Pay Class who
2 were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep their radios
3 powered on with audible volume but also respond to radio notices regardless of whether they were on
4 meal period.

5 185. Furthermore, MR. BUTLER and other Aggrieved Employees were expected to begin
6 working promptly, which meant being dressed in uniform and protective gear and other equipment, and
7 ready for briefing the moment their scheduled shift began. However, DEFENDANTS did not
8 compensate MR. BUTLER and other Aggrieved Employees for donning and doffing their uniforms.
9 Additionally, TCC's policy, procedure, and/or practice of utilizing an uneven rounding system that
10 resulted in, over a period of time, TCC's failure to compensate MR. BUTLER and other Aggrieved
11 Employees properly for all the time they actually worked, including overtime. These policies,
12 procedures, and practices also mean MR. BUTLER, other Aggrieved Employees, and the Premium Pay
13 Class did not receive from TCC a legitimate opportunity to take a meal period by the 5th hour worked.

14 186. On information and belief, other Aggrieved Employees and the Premium Pay Class who
15 were/are subject to TCC's alternative work schedule of 4/10s and who worked over 10 hour days, were
16 not given a legitimate opportunity to take a second meal period after the 10th hour worked, such as prior
17 to doffing their uniforms, protective gear and other equipment.

18 187. Thus, TCC violated § 512. Consequently, DEFENDANTS are liable to MR. BUTLER
19 and the Premium Pay Class for premium pay pursuant to § 226.7(c) which states, "If an employer fails
20 to provide an employee a meal or rest or recovery period in accordance with a state law, including, but
21 not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
22 Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational
23 Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's
24 regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

25 188. DEFENDANTS are also liable to MR. BUTLER and other Aggrieved Employees for
26 attendant PAGA penalties pursuant to Lab Code § 2699.3(a) and § 2699.5 for violating Labor Code §
27 512 and § 226.7(c) in the applicable amount(s) prescribed by Labor Code § 558(a) (*infra*).

28 **SEVENTEETH CAUSE OF ACTION AGAINST DEFENDANTS**

IWC ORDER 4-2001 § 12(A) Violation & IWC ORDER 4-2001 § 12(B) And § 226.7(c) Pay (By MR. BUTLER, the Premium Pay Class, and Aggrieved PAGA Employees)

189. MR. BUTLER incorporates paragraphs 1 through 188 of this complaint as if fully alleged
herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Premium Pay

1 Class against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds liable any employer or
2 other person—who is an owner, director, officer, or managing agent of the employer—acting on behalf
3 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
4 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be
5 violated, Sections...226.7..., may be held liable as the employer for such violation.

6 190. Under Labor Code § 1198, “The maximum hours of work and the standard conditions
7 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
8 labor for employees. The employment of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.

9 191. Under IWC ORDER 4-2001 § 12, titled rest periods, “(A) Every employer shall authorize
10 and permit all employees to take rest periods, which in so far as practicable shall be in the middle of
11 each work period. The authorized rest period time shall be based on the total hours worked daily at the
12 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period
13 need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2)
14 hours. Authorized rest period time shall be counted as hours worked for which there shall be no
15 deduction from wages. (B) If an employer fails to provide an employee a rest period in accordance with
16 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
employee’s regular rate of compensation for each workday that the rest period is not provided.

17 192. TCC operates 24 hour per day, 7 days per week and scheduled MR. BUTLER, other
18 Aggrieved Employees, and the Premium Pay Class to worked various full-time and part-time shifts.
19 TCC did not allow MR. BUTLER, Aggrieved Employees, and the Premium Pay Class to turn off their
20 radios during rest breaks, meaning they were on-duty and on-call rest breaks.

21 193. Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest
22 periods. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. “During required rest periods,
23 employers must relieve their employees of all duties and relinquish any control over how employees
24 spend their break time. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-
1039...” *Augustus v. ABM Security Services, Inc.* at 259.

25 194. Similar to *ABM Security Services*, TCC failed to provide MR. BUTLER, other
26 Aggrieved Employees, and the Premium Pay Class with legitimate opportunities to take uninterrupted
27 rest breaks each workday because rest breaks were interrupted by the requirement to monitor radios.

28 195. TCC expected MR. BUTLER, Aggrieved Employees, and the Premium Pay Class who
were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep their radios

1 powered on with audible volume but also respond to radio notices regardless of whether they were on
2 rest break.

3 196. On information and belief, other Aggrieved Employees and the Premium Pay Class who
4 were/are subject to TCC's alternative work schedule of 4/10s and who worked over 10 hour days, were
5 not given a legitimate opportunity to take a third rest break due to being on-duty and on-call.

6 197. Thus, TCC violated IWC ORDER 4-2001 § 12(A). Consequently, DEFENDANTS
7 are liable to MR. BUTLER and the Premium Pay Class for premium pay pursuant to IWC ORDER 4-
8 2001 § 12(B) and/or § 226.7(c) which states, "If an employer fails to provide an employee a meal or rest
9 or recovery period in accordance with a state law, including, but not limited to, an applicable statute or
10 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety
11 and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay
12 the employee one additional hour of pay at the employee's regular rate of compensation for each
workday that the meal or rest or recovery period is not provided."

13 198. DEFENDANTS are also liable to MR. BUTLER and other Aggrieved Employees for
14 attendant PAGA penalties pursuant to Lab Code § 2699.3 and § 2699.5 for violating IWC ORDER
15 4-2001 § 12(A) in the applicable amount(s) prescribed by Labor Code § 558(a) (*infra*).

16 **EIGHTEENTH CAUSE OF ACTION AGAINST ONLY TCC**

17 **Labor Code § 1174(d) Violation & Labor Code § 1174.5 Civil Penalty**

18 **(By Aggrieved PAGA Employees Which Includes MR. BUTLER)**

19 199. MR. BUTLER incorporates paragraphs 1 through 198 of this complaint as if fully alleged
herein and pleads the following against only TCC.

20 200. Under Labor Code § 1174(d) "Every person employing labor in this state shall... keep, at
21 a central location in the state or at the plants or establishments at which employees are employed,
22 payroll records showing the hours worked daily by and the wages paid to...employees employed at the
23 respective plants or establishments. These records shall be kept in accordance with rules established for
24 this purpose by the commission, but in any case shall be kept on file for not less than three years. An
25 employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid
on a piece-rate basis, piece-rate units earned."

26 201. Under state law, employers must maintain and preserve accurate records showing, *inter*
27 *alia*, when the employee begins and ends work each day; the total number of hours worked on a daily
28 basis; and all meal periods and split shift intervals. See Labor Code § 1174(d) and IWC Wage Order 4-
2001 § 7.

1 202. Under California law, “[h]ours worked means the time during which an employee is
2 subject to the control of an employer, and includes all the time the employee is suffered or permitted to
3 work, whether or not required to do so.” IWC Wage Order 4-2001 § 2(K). This includes donning and
4 doffing required uniforms, protective gear, and other equipment off-the-clock.

5 203. California law does not permit *any* time to be uncompensated. *Carrillo v. Schneider*
6 *Logistics, Inc.*, 823 F. Supp. 2d 1040, 1044 (C.D. Cal. 2011) citing *Armenta v. Osmose, Inc.* (2005) 135
7 Cal.App.4th 314, 317, 324.

8 204. Due to DEFENDANTS’s violation of Labor Code § 226(a) (*supra*), there is no doubt
9 TCC failed to maintain and make available accurate payroll records showing the hours worked daily by
10 and the wages paid to Wage Statement Class members who are also Aggrieved Employees at its
11 corporate and only office located at 101 S. Mills Ave., Claremont, CA 91711. TCC’s has not kept the
12 required payroll or production records and did not make those records available to MR. BUTLER upon
13 his request for “a copy of [his] employee file TCCS has on [his] employment to include all annual
14 performance evaluations.” that Mr. Romanio, TCC’s HR Business partner, ignored and failed to fulfill.
15 Thus, TCC failed to maintain and make available accurate records as required by Labor Code § 1174.

16 205. There is no private right of action under Labor Code § 1174. Because § 1174 does not
17 provide for direct means of recovery by employees, a right of action to recover civil penalties under this
18 statute only exists under PAGA. *Noe v. Superior Court* (2015) 237 Cal. App. 4th 316, 339.

19 206. Therefore, in violating § 1174(d), TCC is liable to MR. BUTLER and other Aggrieved
20 Employees for attendant PAGA civil penalties pursuant to Labor Code § 2699.3(a) and § 2699.5 in the
21 amount enumerated in Labor Code § 1174.5.

22 207. Labor Code § 11174.5 states, “Any person employing labor who willfully fails to
23 maintain the records required by subdivision (c) of Section 1174 or accurate and complete records
24 required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of
25 the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil
26 penalty of five hundred dollars (\$500).

27 **NINETEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

28 **Labor Code § 1182.12 & PAGA Civil Penalties Pursuant To Labor Code § 2699.3(c)**

(By MR. BUTLER, the Non-Exempt Employees Wages Class, and Aggrieved PAGA Employees)

208. MR. BUTLER incorporates paragraphs 1 through 207 of this complaint as if fully alleged
herein and pleads the following against DEFENDANTS.

1 209. According to the relevant part(s) of Labor Code § 1182.12(a), “Notwithstanding any
2 other provision of this part, ...on and after January 1, 2016, the minimum wage for all industries shall be
3 not less than ten dollars (\$10) per hour.

4 210. According to the relevant part(s) of Labor Code § 1182.12(b), “Notwithstanding
5 subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this
6 subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended
7 under subdivision (d).

(1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

8 (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per
9 hour.

10 (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour.

11 (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour.

12 (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.

13 (E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour.

14 (F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

15 211. According to the relevant part(s) of Labor Code § 1182.12(b)(3), “For purposes of this
16 subdivision, “employer” means any person who directly or indirectly, or through an agent or any other
17 person, employs or exercises control over the wages, hours, or working conditions of any person.

18 212. Though detailed earlier in this operative complaint, summarily DEFENDANTS failed to
19 pay MR. BUTLER, other Aggrieved Employees, and the Non-Exempt Employees Wages Class
20 members the applicable minimum wage rates enumerated in Labor Code § 1182.12 subdivisions (a) and
21 (b) from 2016 to at least 2020 for all hours worked by the MR. BUTLER, other Aggrieved Employees,
22 and the Non-Exempt Employees Wages Class members who donned and doffed TCC required uniforms,
23 protective gear, and other equipment on TCC premises off-the-clock—such as Campus Safety Officers,
24 Corporals, and misclassified Sergeants—and/or who were not compensated California’s applicable
25 minimum wage for all hours worked due to TCC’s rounding policy.

26 213. Consequently, TCC violated Labor Code § 1182.12 and is liable to Aggrieved Employees
27 for PAGA penalties under Labor Code § 2699.3(c) in accordance with § 2699.3(f)(2).

28 214. Labor Code § 2699.3(f) states, “For all provisions of this code except those for which a
Civil penalty is specifically provided, there is established a civil penalty for a violation of these
provisions, as follows: (2) If, at the time of the alleged violation, the person employs one or more
employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period

1 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation.

3 **TWENTIETH CAUSE OF ACTION AGAINST DEFENDANTS**

4 **Labor Code § 1194(a) & Liquidated Damages Pursuant To Labor Code § 1194.2**

5 **(By MR. BUTLER, the Non-Exempt Employees Wages Class, and Aggrieved PAGA Employees)**

6 215. MR. BUTLER incorporates paragraphs 1 through 214 of this complaint as if fully alleged
7 herein and pleads the following against DEFENDANTS.

8 216. Under Labor Code § 1194(a) “Notwithstanding any agreement to work for a lesser wage,
9 any employee receiving less than the legal minimum wage or the legal overtime compensation
10 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of
11 this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees,
12 and costs of suit.

13 217. “[S]ection 1194, subdivision (a) provides that any employee receiving “less than the
14 legal minimum wage” is entitled to recover the unpaid balance of the “full amount” owed. The
15 minimum wage applicable to [TCC] is set forth in Labor Code § 1182.12 (*supra*) and IWC Order 4-2001
16 section 4(B), which currently provides: “Every employer shall pay to each employee, on the established
17 payday for the period involved, not less than the applicable minimum wage for all hours worked in the
18 payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” This
19 language expresses the intent to ensure that employees be compensated at least the minimum wage for
20 each hour worked. *Armenta v. Osmose, Inc.* (2005) 37 Cal.Rptr.3d 460, 467.

21 218. The applicable overtime compensation rates for the Non-Exempt Employees Wages
22 Class is one and a half (1.5) times each member’s varying contractually based regular hourly rate of pay.

23 219. Though detailed earlier in this operative complaint, summarily DEFENDANTS failed to
24 pay MR. BUTLER, other Aggrieved Employees, and the Non-Exempt Employees Wages Class
25 members the applicable minimum wage and/or overtime rates for all hours worked by the MR.
26 BUTLER, other Aggrieved Employees, and the Non-Exempt Employees Wages Class members who
27 donned and doffed TCC required uniforms, protective gear, and other equipment on TCC premises off-
28 the-clock—such as Campus Safety Officers, Corporals, and misclassified Sergeants—and/or who were
not compensated California’s applicable minimum wage and/or overtime rates for all hours worked due
to TCC’s rounding policy.

219. Consequently, DEFENDANTS are liable under Labor Code § 1194 to the Non-Exempt

1 Employees Wages Class including MR. BUTLER for “the unpaid balance of the full amount of unpaid
2 minimum wage and/or overtime compensation, including interest thereon, reasonable attorney’s fees,
3 and costs of suit.”

4 221. Furthermore, due to DEFFENDANTS’ violation of Labor Code § 1194, DEFENDANTS
5 are liable to MR. BUTLER and other Aggrieved Employees for PAGA civil penalties pursuant to Labor
6 Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f) (*supra*).

7 222. According to the relevant language of Labor Code § 1194.2, “(a) In any action under
8 Section...1194...to recover wages because of the payment of a wage less than the minimum wage fixed
9 by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages
10 in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision
11 shall be construed to authorize the recovery of liquidated damages for failure to pay overtime
12 compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute
of limitations on an action for wages from which the liquidated damages arise.”

13 223. TCC did not have reasonable grounds for believing its failure to pay the Non-Exempt
14 Employees Wages Class minimum wages was not a violation of any provision of the Labor Code
15 relating to minimum wage or an order of the commission.

16 224. Pursuant to Labor Code § 1194.2, the Non-Exempt Employees Wages Class including
17 MR. BUTLER are entitled to recover liquidated damages in an amount equal to the minimum wages
unlawfully unpaid and interest thereon.

18 **TWENTY-FIRST CAUSE OF ACTION AGAINST DEFENDANTS**

19 **Labor Code § 1197 Violations & Civil Penalty Under Labor Code § 1197.1**

20 **(By MR. BUTLER, the Non-Exempt Employees Wages Class, and Aggrieved PAGA Employees)**

21 225. MR. BUTLER incorporates paragraphs 1 through 224 of this complaint as if fully alleged
22 herein and pleads the following against Defendants.

23 226. Under Labor Code § 1197, “The minimum wage for employees fixed by the commission
24 is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so
fixed is unlawful.”

25 227. Under Labor Code § 1197.1, “(a) Any employer or other person acting either individually
26 or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a
27 wage less than the minimum fixed by an applicable state or local law, or by an order of the commission,
28 shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and
any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is

1 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period
2 for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover
3 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
4 pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred
5 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
6 underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in
7 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
8 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages,
9 and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be
10 paid to the affected employee.”

11 228. According to the relevant portion of Labor Code § 1194.2(a), “In any action under
12 Section... 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed
13 by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages
14 in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision
15 shall be construed to authorize the recovery of liquidated damages for failure to pay overtime
16 compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute
17 of limitations on an action for wages from which the liquidated damages arise.

18 229. Though already explained, summarily, DEFENDANTS failed to pay the applicable
19 minimum wage to MR. BUTLER, other Aggrieved Employees, and the Non-Exempt Employees Wages
20 Class for off-the-clock and/or rounded work, and thus violated California’s minimum wage law(s).

21 230. As a result, MR. BUTLER and other Aggrieved Employees seek the civil penalty under
22 § 1197.1 as the attendant PAGA penalties pursuant to Labor Code § 2699.3(a) and § 2699.5.

23 231. This means as follows:(1) For any initial violation that is intentionally committed, one
24 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
25 underpaid; and (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
26 (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless
27 of whether the initial violation is intentionally committed.

28 232. According to page 5 of TCC’s Campus Safety Training Manual on Grooming – Uniform
– Equipment, under Additional Guidelines pertaining to UNIFORM, “You [meaning Campus Safety
personnel] must be fully dressed and properly groomed **from the moment you clock in**”. TCC’s own
policy that requires the Non-Exempt Employees Wages Class to don and doff their uniforms and

1 equipment off-the-clock demonstrates TCC intentionally did not pay applicable Campus Safety
2 Personnel for such off-the-clock work.

3 **TWENTY-SECOND CAUSE OF ACTION AGAINST DEFENDANTS**

4 **Labor Code § 1197.5(a) Equal Pay Violation And Labor Code § 1197.5(b) Fair Pay Violation**
5 **& Labor Code § 210 Statutory Penalty OR PAGA Civil Penalty**

6 **(By MR. BUTLER, the Non-Exempt Employees Wages Class OR Aggrieved PAGA Employees)**

7 233. MR. BUTLER incorporates paragraphs 1 through 232 of this operative complaint as if
8 fully alleged herein and pleads the following against DEFENDANTS.

9 234. Under Labor Code § 1197.5, an employer shall not pay any of its employees at wage
10 rates less than the rates paid to employees of the opposite sex (§ 1197.5(a)) or of another race or
11 ethnicity (§ 1197.5(b)) for substantially similar work, when viewed as a composite of skill, effort, and
12 responsibility, and performed under similar working conditions, except where the employer
13 demonstrates: (1) The wage differential is based upon one or more of the following factors: (A) A
14 seniority system. (B) A merit system. (C) A system that measures earnings by quantity or quality of
15 production. (D) A bona fide factor other than sex, such as education, training, or experience. This factor
16 shall apply only if the employer demonstrates that the factor is not based on or derived from a sex-based
17 or race- or ethnicity-based differential in compensation, is job related with respect to the position in
18 question, and is consistent with a business necessity. For purposes of this subparagraph, “business
19 necessity” means an overriding legitimate business purpose such that the factor relied upon effectively
20 fulfills the business purpose it is supposed to serve. This defense shall not apply if the employee
21 demonstrates that an alternative business practice exists that would serve the same business purpose
22 without producing the wage differential.

23 (2) Each factor relied upon is applied reasonably.

24 (3) The one or more factors relied upon account for the entire wage differential.

25 (4) Prior salary shall not justify any disparity in compensation. Nothing in this section shall be
26 interpreted to mean that an employer may not make a compensation decision based on a current
27 employee’s existing salary, so long as any wage differential resulting from that compensation decision is
28 justified by one or more of the factors in this subdivision.

235. Under Labor Code § 1197.5(c), any employer who violates § 1197.5(a) and/or (b) is
liable to the employee affected in the amount of the wages, and interest thereon, of which the employee
is deprived by reason of the violation, and an additional equal amount as liquidated damages.

236. To prevail on his EPA claim, MR. BUTLER has the burden to prove that TCC pays different wages to employees of opposite sexes for “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions”.

Campus Safety Officers

237. According to TCC’s written job description for a Campus Safety Officer position, “[t]his position functions as the primary crime prevention and first responder entity within The Claremont Colleges. The men and women serving in this position are committed to protect and serve The Claremont Colleges community with courtesy and respect for every individual’s dignity and legal rights.”

238. According to MR. BUTLER, who participated in the interview process of certain Campus Safety job applicants as a Corporal, including some who became new-hires, and was a Campus Safety Officer prior to being a Corporal, TCC paid female Campus Safety Officers and male Campus Safety Officers different wages for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions. TCC also paid Campus Safety Officers of another race or ethnicity different wages for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

239. The substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions are the essential functions of a TCC Campus Safety Officer, which are as follows according to this same job description: “crime prevention; conduct routine patrols; perform event security duties, including checking identification, controlling the flow of alcohol in and out of an event, monitoring attendee’s behavior along with other general safety issues; provide safety escorts to students, faculty, and staff; report crimes and violations of TCC regulations verbally and in writing to proper authorities, conduct initial investigations, write incident reports and law enforcement related initial crime reports; coordinate and guide responding police and fire/paramedic units in person or via phone or wireless radio; perform other duties as assigned.”

240. All Campus Safety Officers perform the aforementioned job duties regardless of their sex and/or race or ethnicity.

Campus Safety Corporals

241. According to TCC's job description for the role, Corporals perform functions as the primary crime prevention and first responder entity within The Claremont Colleges; provide a critical communication link for Campus Safety calls for service and assistance; perform as a lead officer, training and quality-control duties, under the direct supervision of a shift sergeant and the direction of

1 the VP of Campus Safety and Captain, in order to create more effective crime prevention unit and
2 enhance the quality of service; serve as a watch commander or supervisor in the absence of a Sergeant,
3 Captain or the VP. The men and women serving in this position are committed to protect and serve The
4 Claremont Colleges community with courtesy and respect for everyone's dignity and legal rights.

5 242. A pay disparity between employees of other races or ethnicities also occurred/s amongst
6 Corporals for substantially similar work, when viewed as a composite of skill, effort, and responsibility,
7 and performed under similar working conditions. MR. BUTLER does not know whether a pay disparity
8 between employees of the opposite sex occurs between Corporals because MR. BUTLER is unaware of
9 any female who worked as a Corporal during the same time period MR. BUTLER worked for TCC. On
10 information and believe, MR. BUTLER believes he was paid less than Amir Dennis, who is of a
11 different race than MR. BUTLER, when they were both Corporals.

12 243. The substantially similar work, when viewed as a composite of skill, effort, and
13 responsibility, and performed under similar working conditions are the essential functions of a TCC
14 Campus Safety Corporal, which are as follows according to TCC's job description for the Corporal role:
15 The position incumbent is designated as a Campus Security Authority, whose primary responsibility is
16 to report allegations made in good faith to the reporting structure; supervise patrol officers, including
17 effective field supervision of officers conducting patrols, to ensure the protection of and service to
18 students, faculty and staff; supervise Campus Safety operation and personnel by assigning patrol areas,
19 relay and explain written/oral directives, provide advice and assistance on patrol, etc.; provide in-service
20 training to Campus Safety personnel; review reports and daily logs generated during the shift for
21 completeness and accuracy; conduct quality control field inspections of staff; conduct shift briefings and
22 effectively communicate relevant information to staff; evaluate the performance of staff and provide
23 guidance, as needed; participate as appropriate in specialized and/or complex patrol or investigative
24 assignments by directing activities of assigned Campus Safety staff, including interviewing of witnesses,
25 apprehending and arresting suspects, and preparing and submitting written reports; in the absence of a
26 Sergeant, performs as a watch commander and shift supervisor; in the absence of the VP of Campus
27 Safety, assume duties of an emergency preparedness representative in the event of an emergency, in
28 accordance with the Emergency Preparedness Plan; supervise and coordinate department's inventory
control and equipment issuance efforts; and perform other duties as assigned.

244. All Campus Safety Corporals perform the aforementioned job duties regardless of their
sex and/or race or ethnicity.

1 **Campus Safety Sergeants**

2 245. On information and belief due to his knowledge of Latinx female Campus Safety
3 Sergeant Desiree Flores, MR. BUTLER believes there is an unlawful pay disparity between Mrs. Flores
4 and male Sergeants Amir Dennis, Raul Saucedo, and/or Jeff Chaimberlain, as well as an unlawful pay
5 disparity between Sergeants of different races or ethnicities for substantially similar work, when viewed
6 as a composite of skill, effort, and responsibility, and performed under similar working conditions
7 because all Sergeants performed the same essential job functions.

8 **Campus Safety Dispatch**

9 246. On information and belief due to his knowledge of the TCC's Campus Safety Dispatch,
10 MR. BUTLER believes there is an unlawful pay disparity between male and female Dispatchers were
11 for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and
12 performed under similar working conditions because all Dispatchers performed the same essential job
13 functions.

14 247. Having established a prima facie case under California's Equal Pay Act and Fair Pay Act,
15 the burden of proof shifts to TCC to demonstrate that the unequal pay is justifiable under Labor Code §
16 1197.5(a)(1)-(4).

17 248. Under Labor Code § 1197.5(c), any employer who violates § 1197.5(a) and/or (b) is
18 liable to the employee affected in the amount of the wages, and interest thereon, of which the employee
19 is deprived by reason of the violation, and an additional equal amount as liquidated damages.

20 249. Under Labor Code § 1197.5(h), "An employee receiving less than the wage to which the
21 employee is entitled under this section may recover in a civil action the balance of the wages, including
22 interest thereon, and an equal amount as liquidated damages, together with the costs of the suit and
23 reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage.

24 250. A civil action to recover wages under subdivision (a) or (b) may be commenced no later
25 than two years after the cause of action occurs, except that a cause of action arising out of a willful
26 violation may be commenced no later than three years after the cause of action occurs.

27 251. Therefore, MR. BUTLER seeks to recover the balance of the wages, including interest
28 thereon, and an equal amount as liquidated damages, together with the costs of the suit and reasonable
attorney's fees on behalf of himself and the Non-Exempt Employees Wages Class.

Labor Code § 210 Statutory Penalty OR PAGA Civil Penalty

252. Under Labor Code § 210(a), "In addition to, and entirely independent and apart from, any
other penalty provided in this article, every person who fails to pay the wages of each employee as

provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

253. According to Labor Code § 210(c), “An employee is only entitled to either recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of Section 2699, but not both, for the same violation.

254. Therefore, MR. BUTLER on behalf of himself and the Non-Exempt Employees Wages Class elects to pursue this penalty as a statutory penalty, assuming such yields a larger recovery to affected employees.

TWENTY-THIRD CAUSE OF ACTION AGAINST DEFENDANTS

Labor Code § 1198 Violation

(By MR. BUTLER, the Non-Exempt Employees Wages Class, and Aggrieved PAGA Employees)

255. MR. BUTLER incorporates paragraphs 1 through 254 of this complaint as if fully alleged. Herein, and pleads the following against DEFENDANTS.

256. Under Labor Code § 1198, “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

257. As previously discussed, DEFENDANTS willfully failed to pay MR. BUTLER, other Aggrieved Employees, and the Non-Exempt Employees Wages Class all earned wages, including but not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time, sick leave, and/or vacation pay due to (a) working off-the-clock to don and doff their campus safety uniforms and protective gear such as a ballistics vest; (b) being on-call during meal and rest breaks because Aggrieved Employees did not have a legitimate opportunity to take such uninterrupted, especially Class members and Aggrieved Employees who were/are Campus Safety Officers, Corporals, and/or Sergeants expected to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a rest or meal break; and (c) due to TCC’s policy, procedure, and/or practice of utilizing an uneven rounding system that resulted in, over a period of time, DEFENDANTS’ failure to compensate MR. BUTLER, other Aggrieved Employees, and the Non-Exempt Employees Wages Class properly for all the time they actually worked.

1 258. Therefore, DEFENDANTS violated Labor Code § 1198 and are liable for attendant
2 PAGA penalties pursuant to Labor Code § 2699.3(a) and § 2699.5.

3 **TWENTY-FOURTH CAUSE OF ACTION AGAINST TCC DUE TO MR. ROMANIO**

4 **Lab. Code § 1198.5 Violation**

5 **(By MR. BUTLER and Aggrieved PAGA Employees)**

6 259. MR. BUTLER incorporates paragraphs 1 through 258 of this complaint as if fully alleged
7 herein, and pleads the following on behalf of himself and Aggrieved Employees against TCC due to Mr.
8 Romanio.

9 260. According to Labor Code § 1198.5(a), “Every current and former employee, or his or her
10 representative, has the right to inspect and receive a copy of the personnel records that the employer
11 maintains relating to the employee’s performance or to any grievance concerning the employee.”

12 261. Per the relevant portion of Labor Code § 1198.5(b)(1), “The employer shall make the
13 contents of those personnel records available for inspection to the current or former employee, or his or
14 her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days
15 from the date the employer receives a written request...”

16 262. Under Labor Code § 1198.5(k), “If an employer fails to permit a current or former
17 employee, or his or her representative, to inspect or copy personnel records within the times specified in
18 this section, or times agreed to by mutual agreement as provided in this section, the current or former
19 employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from
20 the employer.

21 263. Pre-litigation, on Monday, July 29, 2019 at 11:00 am, MR. BUTLER emailed Mr.
22 Romanio, writing “Sir, Thank you, I received the check this morning; however, I did notice a
23 discrepancy. Attached is a screen shot of my worked hours via Kronos and a screen shot of my pay slip.
24 My worked hours are 74.15 hours. My pay slip states 72.07 regular hours and 1.33 overtime hours for a
25 total of 73.4 hours. Time discrepancy - 74.15 - 73.4 = 0.75 overtime hours. May the pay discrepancy be
26 corrected please? In addition, may I have a copy of my employee file TCCS has on my employment to
27 include all annual performance evaluations? Thank you in advance.”

28 264. Not only did TCC, through Mr. Romanio, fail to comply with this request within 30
calendar days, TCC through Mr. Romanio, completely ignored MR. BUTLER’s request for “a copy of
[his] employee file TCCS has on [his] employment *to include all annual performance evaluations*
[emphasis added]”, utterly disregarding MR. BUTLER’S right under § 1198.5(a). Thus, TCC violated/s
Labor Code § 1198.5(a) and § 11985(b)(1).

1 265. Given his own experience of being ignored by TCC in trying to request records under
2 Labor Code sections 226(b) (supra) and § 1198.5, MR. BUTLER believes TCC may also have violated
3 the §§ 1198.5 rights of other Aggrieved Employees.

4 266. Even if other Aggrieved Employees have not requested employee records under §
5 1198.5, TCC is nevertheless liable to MR. BUTLER for the statutory penalty pursuant to Labor Code §
6 1198.5(k).

7 267. Per Labor Code § 1198.5(l), “A current or former employee may also bring an action for
8 injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney’s
9 fees in such an action.” Therefore, MR. BUTLER seeks injunctive relief ordering TCC to afford MR.
10 BUTLER, other former employees, and current employees the right under Labor Code § 1198.5 to
11 inspect or receive a copy of the personnel records that the employer maintains relating to the employee’s
12 performance or to any grievance concerning the employee.

13 268. TCC is also liable to MR. BUTLER and other Aggrieved Employees for PAGA civil
14 penalties under § 2699.3(c) due to its violation of § 1198.5.

15 **TWENTY-FIFTH CAUSE OF ACTION AGAINST ONLY TCC**

16 **Lab. Code § 2802(a) Violation**

17 **(By MR. BUTLER, the Reimbursement-Owed Class, and Aggrieved PAGA Employees)**

18 269. MR. BUTLER incorporates paragraphs 1 through 268 of this complaint as if fully
19 alleged herein, and pleads the following on behalf of himself, the Reimbursement-Owed Class, and
20 Aggrieved Employees against only TCC.

21 270. Under Labor Code § 2802(a), “An employer shall indemnify his or her employee for
22 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
23 his or her duties, or of his or her obedience to the directions of the employer...(b) All awards made by a
24 court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures
25 under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue
26 from the date on which the employee incurred the necessary expenditure or loss. (c) For purposes of this
27 section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not
28 limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section. Section
29 2802 is a nonwaivable right.

30 271. An employer generally satisfies this obligation by either reimbursing a given expense or
31 providing the employee with the equipment necessary to ensure he or she does not incur the expense in
32 the first place.

1 272. MR. BUTLER, Aggrieved Employees, and the Reimbursement-Owed Class used their
2 personal cell phones for work related purposes. For example, MR. BUTLER, Aggrieved Employees, and
3 the Reimbursement-Owed Class, during every shift, had to use their cellphones to take pictures of
4 supporting evidence for incident reports and sometimes texted such pictorial evidence to colleagues
5 depending on the circumstances of the incident. Supporting pictorial evidence included but was not
6 limited to pictures of vehicles involved in accidents, pictures of suspect(s), pictures of a location of an
7 incident, pictures of vandalism, pictures of a break in for a burglary, trespassed persons, i.e. any
8 supporting photo that was required for the report.

9 273. However, TCC failed to reimburse MR. BUTLER, Aggrieved Employees, and the
10 Reimbursement-Owed Class for the pro rata basis use of their cells phones to collect pictorial evidence
11 for work-related incident reports, as well as for non-short transmission calls to Dispatch, the on-duty
12 Watch Commander assigned to their shift, and/or to any upper management.

13 274. Employers must reimburse employees for work-related calls on their personal cellphones,
14 even when the employee has “unlimited minutes”. *Cochran v. Schwan's Home Service, Inc.* (2014) 228
15 Cal. App. 4th 1137.

16 275. In *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, the California Supreme
17 Court confirmed that the purpose of the statute is to “prevent employers from passing their operating
18 expenses on to their employees.”

19 276. Furthermore, according to TCC’s Campus Safety Training Manual on Grooming –
20 Uniform – Equipment, TCC required MR. BUTLER, other Aggrieved Employees, and the
21 Reimbursement-Owed Class, as part of their work uniform, “to wear plain black all-leather uniform
22 shoes/combat boots or a combination leather/canvas military boot. Personnel shall keep their shoes
23 neatly polished while on duty.” MR. BUTLER, Aggrieved Employees, and the Reimbursement-Owed
24 Class had to pay for these special shoes/boots and shoe polish for which TCC failed to reimburse them.
25 As noted above, TCC expected MR. BUTLER, Aggrieved Employees, and the Reimbursement-Owed
26 Class to polish these shoes/boots on their own time, i.e. off-the-clock. MR. BUTLER, for example,
27 performed a brush polish every day at a maximum to every other day at a minimum taking 10-20
28 seconds per occurrence, and performed a shine polish approximately once per week taking
approximately 5 minutes. TCC Watch Commanders occasionally performed uniform inspections where
those whose uniforms were not up to TCC standards would be verbally reprimanded, and could even be
sent home.

1 277. In *Gattuso*, the California Court of Appeal concluded that California employers could
2 satisfy their California Labor Code section 2802 reimbursement obligations through separate
3 reimbursements, or paying California employees enhanced compensation. *Gattuso v. Harte-Hanks*
4 *Shoppers, Inc.*, 42 Cal. 4th 554, 559 (2007). The Court held that enhanced compensation could take the
5 form of increased base salary, increased commission rates, or both. *Id.* Where a California employee
6 receives enhanced compensation reimbursements, the employer must utilize an apportionment method
7 delineating between compensation for labor and reimbursement for business expenses. *Id.* Additionally,
8 the reimbursement amount must reimburse the California employee for all expenses incurred. *Gattuso* at
9 p. 575. Where an employer offering enhanced compensation for reimbursement fails to satisfy the
above-mentioned requirements, the California employee has a legal claim.

10 278. TCC did/does not pay enhanced compensation to MR. BUTLER, other Aggrieved
11 Employees, and/or the Reimbursement-Owed Class to satisfy TCC's California Labor Code section
12 2802 reimbursement obligations.

13 279. TCC failed to comply with § 2802 when TCC failed to reimburse MR. BUTLER,
14 Aggrieved Employees, and the Reimbursement-Owed Class for the pro rata use of their cellphones in
15 taking evidentiary pictures and conducting work-related calls, for work-related black shoes/boots TCC
16 required them to wear as part of their uniform, and for shoe polish.

17 280. Thus, TCC violated Labor Code § 2802(a) and owes reimbursement to MR. BUTLER
18 and the Reimbursement-Owed Class for these necessary expenditures or losses incurred by them in
19 direct consequence of the discharge of their duties, or of their obedience to TCC's directions. Under
20 § 2802(b), TCC also owes MR. BUTLER and the Reimbursement-Owed Class "interest at the same rate
21 as judgments in civil action. Interest shall accrue from the date on which the employee incurred the
22 necessary expenditure or loss." Per § 2802(c), this includes all reasonable costs, including, but not
23 limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

24 281. Additionally, TCC is liable to MR. BUTLER and other Aggrieved Employees for PAGA
25 civil penalties for TCC's violation of § 2802. *See* Labor Code § 2699(a), (f), (g).

26 **TWENTY-SIXTH CAUSE OF ACTION AGAINST DEFENDANTS**

27 **Reporting Time Pay**

28 **(By MR. BUTLER, the Non-Exempt Employees Wages Class, and Aggrieved PAGA Employees)**

282. MR. BUTLER incorporates paragraphs 1 through 281 of this complaint as if fully
alleged herein, and pleads the following against DEFENDANTS.

283. Under IWC Order 4-2001, Section 5, "(A) Each workday an employee is required to

1 report for work and does report, but is not put to work or is furnished less than half said employee's
2 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work,
3 but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of
4 pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a
5 second time in any one workday and is furnished less than two (2) hours of work on the second
6 reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which
7 shall not be less than the minimum wage.

8 284. As a former Corporal, MR. BUTLER is aware TCC, in firing its employees, would have
9 soon-to-be terminated employees come into work on their last day but fail to furnish such employees
10 with at least half their regular working hours before firing them. Though MR. BUTLER resigned, he is
11 still owed reporting time pay for the times TCC scheduled MR. BUTLER for a shift, usually due to an
12 evening event such as a campus party, but failed furnish at least half the working hours to MR.
13 BUTLER and/or pay him reporting time pay. MR. BUTLER knows TCC did this to other Non-Exempt
14 Employees Wages Class members and Aggrieved Employees, typically to part-time workers, which
15 MR. BUTLER once was. Therefore, on behalf of the Non-Exempt Employees Wages Class members,
16 MR. BUTLER seeks to recover reporting time pay TCC owes and civil penalties under PAGA.

17 **TWENTY-SEVENTH CAUSE OF ACTION AGAINST ONLY TCC**

18 **I.W.C. Order 4-2001 § 20(A)**

19 **(By MR. BUTLER and Aggrieved PAGA Employees)**

20 285. MR. BUTLER incorporates paragraphs 1 through 284 of this complaint as if fully
21 alleged herein and pleads the following against TCC.

22 286. Under I.W.C. Order 4-2001 § 20(A), "In addition to any other civil penalties provided by
23 law, any employer or any other person acting on behalf of the employer who violates, or causes to be
24 violated, the provisions of this order, shall be subject to the civil penalty of: (1) Initial Violation —
25 \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in
26 addition to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations —
27 \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in
28 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
receive payment of all wages recovered.

28 287. Due to TCC's underpayment of wages to MR. BUTLER, Aggrieved Employees, and
Non-Exempt Employees Wages Class, MR. BUTLER—on behalf of himself, the Non-Exempt

1 Employees Wages Class, and other Aggrieved Employees—seeks additional penalties pursuant to
2 I.W.C. Order 4-2001 § 20(A).

3 **TWENTY-EIGHTH CAUSE OF ACTION AGAINST ONLY TCC**

4 **Unfair Competition**

5 **(By MR. BUTLER and the Restitution Class)**

6 288. MR. BUTLER incorporates paragraphs 1 through 287 of this operative complaint as if
7 fully alleged herein and pleads the following against TCC.

8 289. Under California’s Business and Professions Code § 17200, unfair competition means
9 and includes any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
10 misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3
11 of Division 7 of California’s Business and Professions Code. B & P Code § 17200.

12 290. A business practice violated the “unlawful, unfair or fraudulent” prong if the practice is
13 prohibited by statutory or common law, including if the practice is against public policy. Almost any
14 violation of the law can serve as the basis for an unfair competition claim if, as a result of the unfair
15 competition consumer(s)/employees] are harmed or the business practice provides an unfair advantage to the
16 business over its competitors.

17 291. In this case, TCC violated numerous Labor Code sections, as detailed under each cause of
18 action, through business practices providing an unfair advantage to TCC over its competitors.

19 292. Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be
20 granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition. B & P Code §
21 17202.

22 293. Any person who engages, has engaged, or proposes to engage in unfair competition may
23 be enjoined in any court of competent jurisdiction. The court may make such orders or judgments as
24 may be necessary to prevent the use or employment by any person of any practice which constitutes
25 unfair competition, ...or as may be necessary to restore to any person in interest any money or property,
26 real or personal, which may have been acquired by means of such unfair competition. Any person may
27 pursue representative claims or relief on behalf of others only if the claimant meets the standing
28 requirements of § 17204 and complies with § 382 of the Code of Civil Procedure. B & P Code § 17203.

29 294. In compliance with B & P Code § 17203, MR. BUTLER is a person who has suffered
injury in fact and has lost money or property as a result of TCC’s unfair competition by enforcing the
same unlawful employment policies over at least a four-year period as detailed in this Complaint.

1 295. On behalf of himself and all others similarly situated, i.e. the Restitutions Class, MR.
2 BUTLER seeks both monetary restitution against TCC for its violation(s) of California’s Unfair
3 Competition Laws, as well as injunctive relief to enjoin TCC from further violating any of California’s
4 Labor Code.

5 **JURY TRIAL DEMAND FOR ONLY LEGAL CLAIMS**

6 296. MR. BUTLER, on behalf of himself and all others similarly situated, demands a jury trial
7 on all legal, non-equitable, issues so triable. This results in a court trial for Aggrieved Employees’
8 PAGA claims and the Restitution Class’s UCL claims. “When the legal and equitable causes of action or
9 issues presented in a case are severable, past California decisions establish that a party retains the right
10 to a jury trial of the severable legal issues and a court trial of the severable equitable issues. (See,
11 e.g., *Connell v. Bowes* (1942) 19 Cal.2d 870, 871 [123 P.2d 456] [“It is now established in this state ...
12 that if a complaint states two complete rights of action, one legal and one equitable, a jury trial may be
13 obtained upon the issues raised by the legal cause”]; see generally 7 Witkin, Cal. Procedure (5th ed.
14 2008) Trial, § 86, p. 113 [“Where the action is of a hybrid character, raising both legal and equitable
15 issues, a party is entitled to a jury trial of the severable legal issues”].) *Nationwide Biweekly
Administration, Inc. v. Superior Court of Alameda County* (2020) 9 Cal.5th 279, 317-318.

16 **PRAYER**

17 WHEREFORE, MR. BUTLER, on behalf of himself, all persons similarly situated, and other
18 Aggrieved Employees, prays for the following:

19 297. Judgment in his, the Class’s and Aggrieved Employees’ favor against TCC and/or other
20 DEFENDANTS for any and all causes of actions enumerated above for which each defendant is
21 personally, jointly, severally, and/or jointly and severally liable;

22 298. Compensatory damages—including but not limited to contractual wages and/or statutory
23 minimum wages, equal and fair pay, overtime wages, possible double time wages, premium pay,
24 reporting time pay, sick pay, PTO and/or vacation pay, and unreimbursed expenses—for a minimum of
25 \$5 million;

26 299. Civil penalties under California’s Private Attorney General Act of 2004 (PAGA);

27 300. Statutory penalties enumerated in any applicable section of California’s Labor Code,
28 including but not limited to liquidated damages, premium pay, and waiting time penalties;

29 301. Injunctive relief and restitution pursuant to California’s UCL, enjoining DEFENDANTS
30 from violating California’s Labor Code;

1 302. Attorneys' fees incurred in investigation of, exhausting administrative remedies for,
2 filing and prosecution of this action pursuant to C.C.P. § 1021.5; Lab. Code §§ 218.5⁴, 226(e)(1),
3 226(h), 1194, 1198.5(l), 2699(g), 2802(c), and any other applicable provision of law awarding
4 attorney's fees.

5 303. Costs of suit incurred per C.C.P. §§ 1032(b), 1033.5, and 1034, and any applicable
6 Labor Code sections;

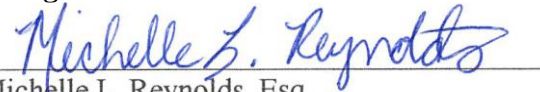
7 304. Tax neutralization, i.e. offsetting tax burden(s) of any recovery/ies (see C.C.P.
8 § 1033.5(c)(4); Civil Code § 3333⁵, and *Economy v. Sutter East Bay Hospitals* (2019) 31 Cal.App.
9 5th 1147). This amount is to offset the increased tax burden on MR. BUTLER, other Aggrieved
10 Employees, and punitive class members resulting from any future lump sum award of damages as
11 compared to what they would have owed in taxes if the damages/wages had been received timely, i.e.
sequentially each applicable calendar year.

12 305. Interest pursuant to Labor Code §§ 1194(a), 1194.2, and § 218.6⁶ and any other
13 applicable provision of law awarding interest; and

14 306. For such other and further relief as this Court may deem just and proper.

15 Dated: November 15, 2021

THE Legal Advocate

16 By: 
17 Michelle L. Reynolds, Esq.

18 Attorney for MR. SHAWN BUTLER, on behalf of all others
19 similarly situated and other Aggrieved Employees
20
21

22 ⁴ Labor Code § 218.5 states in relevant part, "(a) In any action brought for the nonpayment of wages, fringe benefits, or
23 health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing
24 party if any party to the action requests attorney's fees and costs upon the initiation of the action. ... (b) This section does not
25 apply to any cause of action for which attorney's fees are recoverable under Section 1194." Labor Code § 1194 states in
26 relevant part, "(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal
27 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the
28 unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
attorney's fees, and costs of suit."

⁵ For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly
provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it
could have been anticipated or not.

⁶ Labor Code § 218.6 states that in any action brought for the nonpayment of wages, the court shall award interest on all due
and unpaid wages at the rate of interest specified in Civil Code § 3289 (10% per annum), which shall accrue from the date
that the wages were due and payable.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**

3 I am employed in the county of Sacramento, state of California. I am over the age of 18 and not
4 a party to the within action. My business address is 2110 K Street, 124 Sacramento, CA 95816.
5

6 On November 15, 2021, I served the following document(s) on the interested party/parties in this
7 action as follows:

8 **(1) FIFTH AMENDED COMPLAINT**

9
10 Constangy, Brooks, Smith & Prophete, LLP
11 Attn: Richard E. Bromley
12 Attn: Tazamisha Imara
13 2029 Century Park East, Suite 1100
14 Los Angeles, CA 90067
15 E-mail: TImara@constangy.com
and/or
E-mail: RBromley@constangy.com

Attorney(s) for Defendant(s) The Claremont Colleges, Inc., Stig Lanesskog, and Devin Romanio

16 ☒ ONLY BY ELECTRONIC MAIL/SERVICE under CCP § 1010.6 and CRC, Rule 2.251 in
17 accordance with CRC, Rule 3.1362, I caused a true copy of said document(s) to be sent in
18 electronic (PDF or DOCX) format only by e-mailing the document(s) to the persons at the e-mail
19 address(es) listed above, which I declare is the email address for the attorney(s) of record for the
20 Defendant(s) served. During the Coronavirus (Covid-19) pandemic, all counsel and staff will be
working remotely, not able to send physical mail as usual, and are therefore using only electronic
mail. No electronic message or other indication that the transmission was unsuccessful was
received within a reasonable time after the transmission.

21 I declare under penalty of perjury under the laws of the state of California that the above is true
22 and correct. Executed November 15, 2021, in the city of Sacramento, California.

23
24 By: Michelle L. Reynolds
25 Michelle L. Reynolds, Esq.
26
27
28