

Michelle L. Reynolds, Esq., SBN 288234
THE Legal Advocate
2110 K Street, 124
Sacramento, CA 95816
Phone: (714) 474-8097
Fax: (714) 845-9963
Email: AttorneyMichelleReynolds@gmail.com

Attorney for Plaintiff SHAWN BUTLER

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

SHAWN BUTLER, individually and on
behalf of others similarly situated, as well
as an aggrieved former employee, and 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) AKA THE CLAREMONT
COLLEGES SERVICES (TCCS) FKA
CLAREMONT UNIVERSITY
CONSORTIUM (CUC) AND DOES 1-10.

Defendants.

Case No.: 20STCV34934

CLASS ACTION

Assigned for all purposes to Judge Elihu M. Berle

**FOURTH 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 compliant meal periods (Lab. Code § 226.7(b) & (c) and § 512);
5. Failure to provide compliant 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) and (f), and § 1198.5);

Seeking damages for the enumerated claims as follows:

10. Civil Penalties and Statutory Damages;
11. Restitution and Injunction(s) (B&P § 17203);
12. Pre and Post Judgment Interest (§ 218.6); and
13. Costs & Attorney's Fees (Lab. Code §§ 218.5, 226(e)(1), 226(h), 1194, 1198.5(l), 2699(g), and 2802(c); CCP § 1021.5; other applicable statutes.

[DEMAND FOR A JURY TRIAL]

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), formerly known as Claremont University Consortium
5 (CUC), and also known as The Claremont Colleges Services (TCCS), hereinafter collectively referred to
6 as CLAREMONT and/or DOE Defendants 1-10 (DOES), all of whom are hereinafter collectively
7 referred to as DEFENDANTS:

8 **INTRODUCTION**

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

1 employees waiting time penalties; (5) CLAREMONT failed to reimburse CLAREMONT's Campus
2 Safety Department employees for all necessary business expenses; and (6) due to these violations,
3 CLAREMONT failed to fairly compete under California's Business and Professions Code and should be
4 enjoined from violating California's Industrial Wage Order 4-2001 and applicable Labor Code sections.

5 2. Given the numerous violations of California's applicable statutes, regulations, and/or orders
6 alleged within the operative complaint, CLAREMONT is liable for unpaid minimum, regular, overtime,
7 possibly double time, and premium wages; liquidated damages; unreimbursed necessary business
8 expenses; statutory damages; restitution; costs of suit; interest; and attorney(s)' fees.

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

11 4. DOE Defendants are liable under Labor Code § 558.1—effective January 1, 2016—for
12 violating, or causing to be violated, any provision regulating minimum wages or hours and days of work
13 in any order of the Industrial Welfare Commission (in this case IWO 4-2001), and for violating, or
14 causing to be violated, Labor Code §§ 203, 226, 226.7, 1193.6, 1194, and/or 2802. DOE Defendants are
15 also liable under Labor Code § 1197.1 (*infra*).

16 5. MR. BUTLER seeks, on both a class and representative action basis, to recover unpaid
17 minimum, regular, overtime, possibly double time, and premium wages; liquidated damages; treble
18 damages in the future if applicable; reimbursement; restitution; civil penalties; statutory damages, costs
19 of suit; attorney(s)'s fees; and pre and post judgment interest to which MR. BUTLER, the Class as
20 defined below, and Aggrieved PAGA Employees are entitled to recover under California law. MR.
21 BUTLER also seeks to enjoin DEFENDANTS, as may be necessary, to prevent their use or employment
22 of any practice which constitutes unfair competition in California.

23 **JURISDICTION & VENUE**

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

27 7. At the commencement of and at all relevant dates relating to this action, CLAREMONT
28 conducted/s business in the city of Claremont located in Los Angeles County, California.

8. DOE Defendants are owners, directors, officers, and/or other managing agents who worked or
currently work for CLAREMONT that meet the required causal connection between their conduct and
violations of Industrial Wage Order 4-2001 and/or Labor Code sections enumerated in § 558.1 and §

1 1197.1. MR. BUTLER also believes DOE Defendants are situated or reside within Los Angeles County,
2 California.

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

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

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

7 **PARTIES**

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

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

23 14. 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. The members of the Class are identifiable, similarly situated persons who
26 presently work or formerly worked either as non-exempt employees or non-exempt employees
27 misclassified as exempt employees for CLAREMONT, including but not necessarily limited to Campus
28 Safety Officers, Campus Safety Corporals, Campus Safety Sergeants, Dispatchers. The Class also
includes all employees CLAREMONT subjected to its corporate-wide unlawful rounding policy,

1 procedure, and/or practice, as well as all CLAREMONT employees who CLARMONT failed to provide
2 Labor Code § 226 complaint wage statements, including because TCCS, a non-legal entity, is listed as
3 the employer.

4 15. Aggrieved PAGA Employees, including MR. BUTLER, performed work in Los Angeles
5 County, and DEFENDANTS' legal obligations to Aggrieved PAGA Employees under California law
6 arose and were violated in the same county. With respect to PAGA claims, MR. BUTLER, acting as
7 proxy for the State of California, seeks relief on behalf of himself and other current or former employees
8 aggrieved by DEFENDANT's numerous violations of California's Labor Code. These employees are
9 herein after collectively referred to as "Aggrieved PAGA Employees".

10 16. Per Labor Code § 2699(c), Aggrieved PAGA Employees are any person who was/is employed
11 by CLAREMONT and against whom one or more of the alleged violations was committed. As
12 explained within this operative complaint, MR. BUTLER is an aggrieved employee under PAGA. Other
13 Aggrieved PAGA Employees include current and/or former employees with the following *non-*
14 *exhaustive* list of job title(s): (1) Campus Safety Officer, Campus Safety Corporal, and Campus Safety
15 Dispatchers, as well as those employees CLAREMONT misclassified as salary exempt including but not
16 necessarily limited to Campus Safety Sergeants because these salaried employees did/do not (1)
17 customarily and regularly exercise discretion and independent judgment; (2) were/are not primarily
18 engaged in duties which meet the test of any exemption; and (3) on information and belief, may not have
19 been paid a high enough salary to meet the salary test for any exemption. Aggrieved PAGA Employees
20 also include all employees CLAREMONT subjected to it unlawful rounding policy, procedure, and/or
21 practice, as well as all CLAREMONT employees who CLAREMONT failed to provide compliant Labor
22 Code § 226 wage statements.
23
24
25
26
27
28

1 17. *Defendant* The Claremont Colleges, Inc. (TCC), formerly known as Claremont University
2 Consortium (CUC), and also known as The Claremont Colleges Services (TCCS), hereinafter
3 collectively referred to as CLAREMONT: According to its Articles of Incorporation filed with
4 California’s Secretary of State, TCC is a nonprofit public benefit corporation doing business in the State
5 of California with its principal business office located at 101 South Mills Avenue, Claremont, CA
6 91711. TCC is also known as (aka) The Claremont Colleges Services (TCCS) which is not a registered
7 DBA. The legal entity of TCC was effective January 1, 2018. Prior to this date TCC was known as
8 Claremont University Consortium (CUC). TCC’s specific and sole purpose is to support the activities of
9 the group known as The Claremont Colleges, presently consisting of five undergraduate colleges—
10 Claremont McKenna College, Harvey Mudd College, Pitzer College, Pomona College, and Scripps
11 College--and two graduate institutions, Claremont Graduate University and Keck Graduate Institute of
Applied Life Sciences. TCC is the currently existing legal entity that is the employer in this case.

12 18. *DOE Defendant(s)*: DOE Defendants are liable under Labor Code § 558.1 and/or § 1197.1.

13 19. Pursuant to Labor Code § 558.1, DOE Defendants are “(a) [a]ny employer or person acting on
14 behalf of [CLAREMONT], 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, [who] may be held liable
as the employer for such violation.

17 20. Under 558.1(b), “[f]or purposes of this section, the term “other person acting on behalf of the
18 employer is limited to a natural person who is an owner, director, officer, or managing agent of the
19 employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of
20 the Civil Code.”

21 21. DOE Defendants also meet the requisite casual connection element of Labor Code § 1197.1.
22 Pursuant to § 1197.1(a), “Any employer or other person acting either individually or as an officer, agent,
23 or employee of another person, who pays or causes to be paid to any employee a wage less than the
24 minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to
25 a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable
penalties imposed pursuant to Section 203...”

26 22. MR. BUTLER suspects Stig Lanesskog, the CEO of TCC and TCCS according to Mr.
27 Lanesskog’s LinkedIn profile, as well as Stan Skipworth, the Vice President and Director of TCCS’s
28 Campus Safety Department, could ultimately be held personally liable under Labor Code § 558.1 and/or

1 § 1197.1. However, at this time prior to discovery, MR. BUTLER realizes through meeting and
2 conferring with defense counsel that MR. BUTLER does not yet possess enough information to
3 determine the requisite casual connection between Mr. Lanesskog and/or Mr. Skipworth and whether
4 he/they violated, or caused to be violated, any provision regulating minimum wages or hours and days of
5 work in any order of the Industrial Welfare Commission, or violated, or caused to be violated, Labor
6 Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802 per Labor Code § 558.1 and/or paid or caused to be paid
7 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
8 of the commission pursuant to Labor Code § 1197.1.

9 23. MR. BUTLER knows Devin Romanio violated or caused to be violated Labor Code §§ 203, 226,
10 and 1194. However, at this time prior to discovery, MR. BUTLER realizes through meeting and
11 conferring with defense counsel that MR. BUTLER does not yet possess enough information to
12 determine whether Mr. Romanio is truly a “managing agent” as required by Labor Code § 558.1.

13 24. Therefore, the true names and capacities, whether individual, corporate, subsidiary, partnership,
14 associate or otherwise of Defendant(s) DOES 1 through 10, inclusive, are presently unknown, even
15 though suspected, by MR. BUTLER who therefore sues these Defendants by such fictitious names
16 pursuant to CCP § 474. MR. BUTLER will seek leave to amend this operative Complaint to allege the
17 true names and capacities of DOE Defendants if/when they are ascertained through discovery. MR.
18 BUTLER will not actually know whether the aforementioned suspected persons should or should not be
19 added as co-defendants with CLAREMONT because MR. BUTLER, without discovery, just does not
20 know enough facts to determine whether others beside CLAREMONT should be held liable under Labor
21 Code § 558.1 and/or § 1197.1.

22 25. 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 26. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through
28 25 above as though fully set forth herein.

27 27. Vicarious liability is a form of a strict, secondary liability that arises under the common law
28 doctrine of agency, respondeat superior, the responsibility of the superior for the acts of their
subordinate or, in a broader sense, the responsibility of any third party that had the “right, ability or duty

1 to control” the activities of a violator.

2 28. CLAREMONT is vicariously liable for any DOE Defendant(s)’ actions, as well as the actions of
3 any of its other managing agents, co-conspirators, joint venturers, directors, officers and/or employees of
4 CLAREMONT, who acted within the course and scope of said agency, conspiracy, joint venture, and/or
5 employment, with the actual or constructive knowledge and/or consent of CLAREMONT. MR.
6 BUTLER is informed and believes that each Defendant authorized and/or ratified the wrongful activities
7 of each of the remaining Defendants alleged within this operative Complaint. CLAREMONT’S conduct
8 was undertaken by its director(s), officer(s), managing agent(s) and other persons responsible for
9 supervision of employees and for the drafting and implementation of policies and other managerial
10 decisions. The conduct of the officers, managing agents, and other individuals was on behalf of
11 CLAREMONT. Further, CLAREMONT had advance knowledge of such conduct of said individuals
12 whose actions and conduct were authorized, approved, ratified, and/or actually or constructively known
13 by CLAREMONT’s director(s), officer(s), managing agent(s) and other persons responsible for
14 supervision of employees and for the drafting and implementation of policies and other managerial
15 decisions.

16 **PAGA ADMINISTRATIVE REMEDIES EXHAUSTED**

17 29. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through
18 28 above as though fully set forth herein.

19 30. MR. BUTLER timely sent a PAGA Notice by certified mail to TCC, Mr. Lanesskog, and DOES
20 1 through 10 on July 29, 2020, and timely filed the PAGA Notice with the Labor Workforce and
21 Development Agency (LWDA) via the LWDA’s online portal of <https://dir.tfaforms.net/128>. On June
22 30, 2021, MR. BUTLER filed an Amended PAGA Notice and this Fourth Amended Complaint with
23 the LWDA, as well as served the Amended PAGA Notice on TCC fka CUC aka TCCS, Mr. Lanesskog,
24 and DOES 1 through 10 through defense counsel for TCC and Mr. Lanesskog via Case Anywhere.

25 31. Both the initial PAGA Notice and Amended PAGA Notice gave written notice to the LWDA
26 and the employer in this case of the specific provisions of California’s Labor Code alleged to have been
27 violated, including the facts and theories to support the alleged violation. Therefore, MR. BUTLER
28 complied with Labor Code § 2699.3(a)(1)(A), § 2699.3(b)(1), and § 2699.3(c)(1)(A).

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

33. Any future amendments to MR. BUTLER’S PAGA Notice are incorporated by reference into

1 the operative complaint for this action.

2 **LABOR CODE § 211 DEMAND**

3 34. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through
4 33 above as though fully set forth herein.

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

7 36. MR. BUTLER's initial PAGA Notice also served as the demand required by Labor Code § 211
8 for violation(s) Labor Code § 210 and § 211. MR. BUTLER demanded, on behalf of himself and other
9 Aggrieved Employees, CLAREMONT pay the highest calculatable penalties under § 210, as well as
10 DEFENDANTS pay all wages due yet unpaid to Aggrieved Employees, including MR. BUTLER, under
11 Labor Code § 204 and/or § 1197.5.

12 **CLASS DEFINITION(S)**

13 37. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through
14 36 above as though fully set forth herein. MR. BUTLER brings class action claims on behalf of
15 himself and on behalf of all other similarly situated persons pursuant to California's Code of Civil
16 Procedure (CCP) § 382. The members of the California-Only Putative Class belong to the (a) Non-
17 Exempt Employees Wages Class; (b) Premium Pay Class; (c) Wage Statement Class; (d) Former
18 Employees Class; (e) Reimbursement-Owed Class; and (f) Restitution Class (collectively the "Class")
19 defined as follows:

20 (a) **Non-Exempt Employees Wages Class:** All persons who, at any time since the date three
21 years before the filing of the initial complaint until the future disposition of this case
22 (class period), worked for CLAREMONT in California as a non-exempt employee
23 including but not limited to Campus Safety Officers and Corporals, as well as
24 employees whom CLAREMONT misclassified as salaried exempt, including but not
25 limited to Sergeants and

26 (i) who were not compensated for time worked including but not limited to
27 donning and doffing work uniforms and/or gear CLAREMONT required
28 employees to don and doff on CLAREMONT premises; and/or

(ii) employees who were subject to CLAREMONT's unlawful rounding
policy, practice and procedure, including but not limited to Campus Safety
Officers, Corporals, Dispatchers, and/or Sergeants.

(iii) 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

1 in a workweek prior to the date CLAREMONT implemented the results
2 from its August 14, 2020 alternative workweek election pursuant to Labor
3 Code § 511, as well as affected employees in the Campus Safety
4 Department who work/ed over 10 hours in a workday or over 40 hours in a
workweek after CLAREMONT implemented an alternative workweek
schedule consisting of four days, ten hours per day;

5 (iv) and/or employees paid wage rates less than the rates paid to employees of the
6 opposite sex for substantially similar work, when viewed as a composite of skill,
7 effort, and responsibility, and performed under similar working conditions; and/or

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

10 (b) **Premium Pay Class:** All persons who, at any time since the date three years before the
11 filing of the initial complaint until the future disposition of this case (class period),
12 worked for CLAREMONT in California as a non-exempt employee or CLAREMONT
13 misclassified as salaried exempt, and who did not have a legitimate opportunity to take Labor
14 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 CLAREMONT'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;

15 (c) **Wage Statement Class:** All persons who, at any time since the date three years before the
16 filing of the complaint until the future disposition of this case (class period), worked for
17 CLAREMONT in California as a non-exempt employee or whom CLAREMONT
18 misclassified as salaried exempt, and whose itemized wage statements are inaccurate
and caused injury to such employee(s) including but not limited to CLAREMONT
19 failing to accurately detail all of the gross wages earned by employees, CLAREMONT
20 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, and/or for
CLAREMONT failing to provide the actual name of the legal entity that is the employer;

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

25 (e) **Reimbursement-Owed Class:** All persons who worked for CLAREMONT in
26 California as an employee, and whose employment with CLAREMONT ended at any
27 time since the date three years before the filing of the initial complaint until the future
28 disposition of this case (class period), and CLAREMONT failed to indemnify for all
necessary expenditures or losses incurred by these employees in direct consequence of

1 the discharge of their duties, or of their obedience to the directions of CLAREMONT.
2 This includes but is not necessarily limited to reimbursement for the following: the pro
3 rata use of employees' cellphones including but not limited to taking evidentiary pictures and
4 conducting work-related calls; work-related black shoes/boots required by CLAREMONT as
part of their uniform, and shoe polish; and

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

9 CLASS ALLEGATIONS

10 38. MR. BUTLER incorporates by reference all of the allegations set forth in paragraphs 1 through
11 37 above as though fully set forth herein. The requirements for class certification are met in this case as
12 follows: CLAREMONT failed to pay MR. BUTLER and the Non-Exempt Employees Wages Class
13 all minimum, regular, overtime, and possibly double time wages these employees earned for the time
14 CLAREMONT's policy/ies, procedure(s), and/or practice(s) required them to don and doff their
15 respective uniforms upon work premises during MR. BUTLER'S entire duration of employment with
16 CLAREMONT until such time CLAREMONT ceases such unlawful uniform policy, procedure,
17 and/or practice that results in unpaid but earned off-the-clock work. CLAREMONT also engaged/s in
18 unlawful rounding practices, resulting in CLAREMONT not only failing to compensate MR. BUTLER
19 for all the time he worked for CLAREMONT, but also failing to compensate all non-exempt
20 employees for all the time they worked. As a result of CLAREMONT's failure to pay its non-exempt
21 employees all wages they earned, CLAREMONT also uniformly failed to provide MR. BUTLER and
22 other Wage Statement Class members with accurate and complete wage statements as required by Labor
23 Code § 226. Furthermore, CLAREMONT's wage statements for all its employees, both exempt and
24 non-exempt, uniformly failed to list TCC fka CUC and instead list TCCS as the Wage Statement Class
25 members' employer. Also, CLAREMONT owes MR. BUTLER and other Premium Pay Class members
26 premium pay because they were on call throughout all meal and rest breaks due to their adherence to
27 CLAREMONT's uniform policy, procedure and/or practice mandating Campus Safety personnel—
28 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.

1 Additionally, CLAREMONT uniformly failed to pay former employees, including MR. BUTLER, all
2 the wages owed to them upon separation of employment as required by Labor Code § 201 and/or § 202.
3 As a result, CLAREMONT is liable to the Former Employees Class members, including MR. BUTLER,
4 for waiting time penalties pursuant to Labor Code § 203 for CLAREMONT's willful failure to pay
5 former employees all the wages owed to them upon separation of employment. CLAREMONT failed to
6 indemnify the Reimbursement-Owed Class, including MR. BUTLER, for all necessary expenditures or
7 losses incurred by these employees in direct consequence of the discharge of their duties, or of
8 their obedience to the directions of CLAREMONT under Labor Code § 2802, including but
9 not limited to reimbursement for the following: the pro rata use of employees' cellphones including
10 but not limited to taking evidentiary pictures and conducting work-related calls; work-related black
11 shoes/boots required by CLAREMONT as part of their uniform, and shoe polish. Lastly, due to
12 CLAREMONT's numerous violations of California's Labor Code, CLAREMONT unfairly competed by
13 gaining an unfair advantage over CLAREMONT's competition. Therefore, TCC is liable to the
14 Restitution Class for its unfair competition.

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

23 **40. Community of Interests:** This action has been brought and may be maintained as a class action
24 pursuant to CCP § 382 because there is a well-defined community of interests among many
25 persons who comprise a readily ascertainable class. Per *Vasquez v. Superior Court* (1971) 4 Cal.3d
26 800 at 809, the right of each employee to recover is not based on a separate set of facts applicable only
27 to him/her. "The requirement of a community of interest does not depend upon an identical recovery,
28 and the fact that each member of the class must prove his separate claim to a portion of any recovery by
the class is only one factor to be considered in determining whether a class action is proper." *Id.* "The

1 “community of interest” requirement embodies three factors: (1) predominant common questions of law
2 or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
3 who can adequately represent the class.” *Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th
4 319, 326. Courts may also consider whether the class action procedure is “superior” to litigating claims
5 individually.

6 41. **Commonality:** Common questions of law and fact exist as to the members of the Class and
7 predominate over any questions that affect only individual members of the Class. Though “[i]ndividual
8 issues do not render class certification inappropriate so long as such issues may effectively be
9 managed.” *Id.* at p. 33. These common questions of law and fact include, but are not limited to: (i) Did
10 CLAREMONT fail to pay earned wages to Class members by requiring them to don CLAREMONT-
11 required uniforms off-the-clock at CLAREMONT’s work premises prior to clocking in for their
12 scheduled work shift? (ii) Did CLAREMONT fail to pay earned wages to Class members by requiring
13 them to doff CLAREMONT-required uniforms off-the-clock at CLAREMONT’s work premises after
14 clocking out upon finishing their scheduled work shift? (iii) Did CLAREMONT utilize a time rounding
15 system that led to CLAREMONT violating California’s wage and hour laws that resulted in
16 CLAREMONT’s failure to pay Class members all wages owed for all hours worked? (iv) During meal
17 and/or rest periods, were Class members on call due to CLAREMONT’s uniform policy, procedure,
18 and/or practice requiring them to carry and monitor a communication device, e.g. radio, and thus
19 CLAREMONT owes Class members premium pay for interrupted, late, and/or missed meal and rest
20 periods? (v) Are the wage statements of Class members inaccurate and did such inaccuracy cause Class
21 members injury, including but not limited to listing TCCS instead of the lawful employer TCC/CUC, in
22 violation of Labor Code § 226? (vi) Did CLAREMONT willfully fail to pay Class members who no
23 longer work for CLAREMONT all the wages they earned upon separation of employment, and if so are
24 these Class members entitled to waiting time penalties pursuant to Labor Code § 203? (vii) Did
25 CLAREMONT fail to indemnify Class members for all necessary business expenses, and thus owes
26 reimbursement with interest to Class members? (viii) Are Class members owed restitution due to
27 CLAREMONT’s unfair competition resulting from CLAREMONT’s numerous violations of
28 California’s Labor Code. Even though all Class members may not have suffered a violation of the same
laws, essentially the Class members have suffered the same injury. The Class members claims depend
upon a common contention that is of 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.

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

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

44. Manageability: A class action is superior to other available means (if any) for fair and efficient adjudication of the claims of the Class and would be beneficial for the Parties and the court. Class action treatment will allow a large number of similarly situated persons, in this case 50 to over 400 persons, to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The monetary amounts due to many individual Class members are likely to be relatively small, and the burden and expense of litigation would make it 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. This 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 CLAREMONT

Lab. Code § 201 Violation & Civil Penalties Under PAGA

(By Former Employees Class and Aggrieved Employees)

1 45. MR. BUTLER incorporates paragraphs 1 through 44 of this operative complaint as if fully
2 alleged herein, and pleads the following on behalf of applicable members of the Former Employees
3 Class, and applicable Aggrieved Employees against ONLY CLAREMONT:

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

6 47. Although MR. BUTLER was not discharged, MR. BUTLER knows CLAREMONT discharged
7 other Aggrieved Employees and other members of the Former Employees Class. When CLAREMONT
8 discharged these other Aggrieved Employees and relevant Former Employees Class members,
9 CLAREMONT failed to pay the respective wages they earned but remained unpaid at the time of
10 discharge which became due and payable immediately upon separation of employment.

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

19 49. CLAREMONT also failed to pay reporting time pay to discharged Aggrieved Employees and
20 relevant members of the Former Employees Class. Reporting time pay constitutes wages. See *Murphy v.*
21 *Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due
22 at the time of employment termination is a basis for waiting time penalties pursuant to Labor Code §
23 203, and thus is also a basis for PAGA civil penalties for CLAREMONT’s Labor Code § 201 violation.

24 50. Also, CLAREMONT failed to immediately pay relevant discharged Aggrieved Employees and
25 Former Employees Class members all earned and unpaid premium pay due to these employees being on-
26 call during rest and meal breaks because these Aggrieved Employees and Former Employees Class
27 members did not have a legitimate opportunity to take meal/rest breaks, took such untimely, and/or such
28

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 meal/rest breaks were interrupted, especially Aggrieved Employees and Former Employees Class
2 members who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to
3 not only keep their radios powered on with audible volume but also respond to radio notices regardless
4 of whether they were on a rest or meal break. Furthermore, at all times relevant to this action,
5 CLAREMONT's written policies did not authorize off-duty rest breaks for Campus Safety Officers,
6 Corporals, Sergeants, and/or Dispatchers. "...[T]he remedy provided in Labor Code section 226.7
7 constitutes a wage or premium pay and is governed by a three-year statute of limitations...". See
8 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094.

9 51. Also, CLAREMONT's policy, procedure, and/or practice of utilizing an uneven/unlawful
10 rounding system resulted in, over a period of time, CLAREMONT's failure to compensate Aggrieved
11 Employees and Class members properly for all the time they actually worked. A rounding policy is not
12 "consistent with the core statutory and regulatory purpose that employees be paid for all time
13 worked...In light of the wage order's remedial purpose requiring a liberal construction, its directive to
14 compensate employees for all time worked, the evident priority it accorded that mandate
15 notwithstanding customary employment arrangements, and its concern with small amounts of time, the
16 de minimis doctrine has no application under the circumstances presented here." *Troester v. Starbucks*
17 *Corp.* at 847. CLAREMONT is an employer that requires its employees to work minutes off the clock
18 on a regular basis or as a regular feature of the job. CLAREMONT may not evade the obligation to
19 compensate its employees for that time by invoking the de minimis doctrine. "...[A] few extra minutes
20 of work each day can add up." *Id.* Thus, CLAREMONT's rounding policy resulted in CLAREMONT
21 not complying with Labor Code § 201 because CLAREMONT failed to compensate former
22 CLAREMONT employees who are members of the Non-Exempt Employees Wages Class and relevant
23 Aggrieved Employees for the minutes of work each day that added up due to CLAREMONT's rounding
24 system.

25 52. Thus, CLAREMONT failed to immediately pay, upon separation of employment, all wages
26 earned by Aggrieved Employees and members of the Former Employees Class who CLAREMONT
27 discharged. Consequently, CLAREMONT violated Labor Code § 201 and is liable to Aggrieved
28 Employees for PAGA
penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2).

53. 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

1 follows: (2) If, at the time of the alleged violation, the person employs one or more employees, the civil
2 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
3 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
4 subsequent violation.

5 54. Furthermore, CLAREMONT and other defendant(s) are liable for statutory waiting time
6 penalties to the Former Employees Class under § 203 (*supra*).

7 **SECOND CAUSE OF ACTION AGAINST ONLY CLAREMONT**

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

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

10 55. MR. BUTLER incorporates paragraphs 1 through 54 of this operative complaint as if fully
11 alleged herein, and pleads the following on behalf of himself, the Former Employees Class, and
12 Aggrieved Employees against ONLY CLAREMONT:

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

17 57. MR. BUTLER quit CLAREMONT’s employment by giving at least 72 hours previous notice of
18 his intention to quit with his last working day to be July 29, 2019, which it was.

19 58. MR. BUTLER knows for himself, and on information and belief believes, that CLAREMONT
20 also did not timely pay other Aggrieved Employees and Former Employees Class members who quit all
21 earned and unpaid wages in compliance with Labor Code § 202(a), including but not necessarily limited
22 to minimum, regular, overtime, double time wages, and/or vacation pay that should have accrued, due to
23 these Aggrieved Employees and relevant Former Employees Class members (a) working off-the-clock
24 every workday to don and doff their CLAREMONT-required work uniforms on CLAREMONT’s
25 premises, protective gear such as a ballistic vest, and other work-related equipment. “The relevant
26 statutes and wage order do not allow employers to require employees to routinely work for minutes off
27 the clock without compensation.” *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848.

28 59. Also, CLAREMONT failed to comply with Labor Code § 202(a) because CLAREMONT failed
to pay relevant Aggrieved Employees and Former Employees Class members all earned and unpaid
premium pay due to these employees being on-call during rest and meal breaks because these Aggrieved
Employees and Former Employees Class members did not have a legitimate opportunity to take

1 meal/rest breaks, took such untimely, and/or such meal/rest breaks were interrupted, especially
2 Aggrieved Employees and Former Employees Class members who were/are Campus Safety Officers,
3 Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible
4 volume but also respond to radio notices regardless of whether they were on a rest or meal break.
5 Furthermore, at all times relevant to this action, CLAREMONT's written policies did not authorize off-
6 duty rest breaks for Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers. "...[T]he remedy
7 provided in Labor Code section 226.7 constitutes a wage or premium pay and is governed by a three-
8 year statute of limitations...". See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094.

9 60. Also, CLAREMONT's policy, procedure, and/or practice of utilizing an uneven/unlawful
10 rounding system resulted in, over a period of time, DEFENDANTS' failure to compensate Aggrieved
11 Employees and Class members properly for all the time they actually worked. A rounding policy is not
12 "consistent with the core statutory and regulatory purpose that employees be paid for all time worked...
13 In light of the wage order's remedial purpose requiring a liberal construction, its directive to compensate
14 employees for all time worked, the evident priority it accorded that mandate notwithstanding customary
15 employment arrangements, and its concern with small amounts of time, the de minimis doctrine has no
16 application under the circumstances presented here." *Troester* at 847. CLAREMONT is an employer
17 that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the
18 job. CLAREMONT may not evade the obligation to compensate its employees for that time by invoking
19 the de minimis doctrine. "...[A] few extra minutes of work each day can add up." *Id.* Thus,
20 CLAREMONT's rounding policy resulted in CLAREMONT not complying with Labor Code § 202(a)
21 because CLAREMONT failed to compensate the Former Employees Class and relevant Aggrieved
22 Employees for the minutes of work each day that added up due to CLAREMONT's rounding system.

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

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

27 63. Labor Code § 2699.3(f) states, "For all provisions of this code except those for which a civil
28 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

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

3 64. Furthermore, CLAREMONT and other defendants are liable for statutory waiting time penalties
4 to the Former Employees Class under § 203 (*supra*).

5 **THIRD CAUSE OF ACTION AGAINST DEFENDANTS**

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

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

8 65. MR. BUTLER incorporates paragraphs 1 through 64 of this complaint as if fully alleged herein,
9 and pleads the following on behalf of himself and the Former Employees Class against DEFENDANTS
10 pursuant to Labor Code § 558.1(a) which holds liable any employer or other person—who is an owner,
11 director, officer, or managing agent of the employer—acting on behalf of an employer, who violates, or
causes to be violated, Labor Code § 203:

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

17 67. Labor Code § 203(a) states in pertinent part, “If an employer willfully fails to pay, without
18 abatement or reduction, in accordance with sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages
19 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty
20 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the
wages shall not continue for more than 30 days.”

21 68. According to Labor Code § 203(b), “Suit may be filed for these penalties at any time before the
22 expiration of the statute of limitations on an action for the wages from which the penalties arise, which
23 is three (3) years. All compensation is considered in determining if all wages due were paid as
24 prescribed by law, including the following wages/pay DEFENDANTS failed to pay MR. BUTLER,
25 Aggrieved Employees, and the Non-Exempt Employees Wage Class (1) minimum, regular, overtime,
26 and/or possible double time wages due to working off-the-clock hours to don and doff a required
27 uniform, protective gear including ballistic vest, and other work-related equipment; (2) all wages due to
28 CLAREMONT’s unlawful rounding system; (3) all accrued, but unused, vacation or vacation that
should have accrued but remained unused; (4) reporting time pay in violation of the Industrial Wage

1 Order applicable to CLAREMONT, and (5) possibly failing to pay premium pay per Labor Code §
2 226.7.

3 69. MR. BUTLER knows for himself, and believes in good faith for other Aggrieved Employees and
4 the Former Employees Class, that DEFENDANTS willfully failed to timely pay them all of their earned
5 wages upon separation of employment.

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

21 71. On Thursday, July 25, 2019 at 1:37 PM, Devin Romanio emailed MR. BUTLER, informing
22 him that his “final pay/check will be available for pick up at the ACC Front Desk Monday (7/29) after
23 3pm.” MR. BUTLER replied, explaining that his “last day of work is, Monday, July 29, 2019, and [he’s]
24 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
25 check after 3pm. Can something be worked out to have the check ready shortly after 6:00am?” They
26 agreed MR. BUTLER’s final paycheck could be mailed to him. On Monday, July 29, 2019 at 11:00 am,
27 MR. BUTLER emailed Mr. Romanio, writing “Sir, Thank you, I received the check this morning;
28 however, I did notice a discrepancy. Attached is a screen shot of my worked hours via Kronos and a
screen shot of my pay slip. My worked hours are 74.15 hours. My pay slip states 72.07 regular hours
and 1.33 overtime hours for a total of 73.4 hours. Time discrepancy - $74.15 - 73.4 = 0.75$ overtime
hours. May the pay discrepancy be corrected please? In addition, may I have a copy of my employee file

1 TCCS has on my employment to include all annual performance evaluations? Thank you in advance.”
2 Mr. Romanio, and thus CLAREMONT because Mr. Romanio acted within the course and scope of his
3 employment for CLAREMONT, ignored MR. BUTLER’s requests.

4 72. Therefore, MR. BUTLER’s payroll record for his final check proves DEFENDANTS paid MR.
5 BUTLER less than the hours he actually worked due to MR. BUTLER (a) working off-the-clock to don
6 and doff his campus safety uniform and protective gear such as a ballistics vest every shift he worked;
7 (b) being on-call during rest and meal breaks because he did not have a legitimate opportunity to take
8 such uninterrupted, especially because MR. BUTLER was expected to not only keep his radio powered
9 on with audible volume but also respond to radio notices regardless of whether he was on a rest or meal
10 break; and (c) due to CLAREMONT’s policy, procedure, and/or practice of utilizing an uneven
11 rounding system that resulted in, over a period of time, CLAREMONT’s failure to compensate
Aggrieved Employees properly for all the time they actually worked.

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

17 74. DEFENDANTS’ and Mr. Romanio’s utter disregard of MR. BUTLER’s request to have his
18 final paycheck corrected is sufficient evidence DEFENDANTS willfully failed to pay, without
19 abatement or reduction, in accordance with § 202 any wages of MR. BUTLER who quit. To this date,
20 Mr. Lanesskog has yet to order the payment of all of MR. BUTLER’S earned wages. MR. BUTLER
21 believes this be true for other Former Employees Class members.

22 75. Therefore MR. BUTLER’s wages continue as a penalty from the due date thereof at the same
23 rate until paid or until an action therefor is commenced; but the wages do not continue for more than 30
24 days. Given MR. BUTLER’s last day of work was on July 29, 2019, clearly 30 days have elapsed.

25 76. MR. BUTLER may file suit “for these [statutory] penalties at any time before the expiration
26 of the statute of limitations on an action for the wages from which the penalties arise”, i.e. three (3)
27 years. MR. BUTLER filed this action on September 14, 2020, a date which is well within the 3-years
statute of limitations.

28 77. In calculating the rate of pay for purposes of computing the penalty, overtime and double time

1 wages are considered if they were regularly scheduled or worked each week, as is/was the case for MR.
2 BUTLER during his employment with CLAREMONT. The penalty is measured at the employee's daily
3 rate of pay and is calculated by multiplying the daily wage by the number of days that the employee was
4 not paid, up to a maximum of 30 days. The 30-day period is calendar days and includes weekends and
5 holidays and any other days that the employee would not normally work.

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

10 79. With regard to waiting time penalties for the Former Employees Class which includes MR.
11 BUTLER, according to page 5 of CLAREMONT's Campus Safety Training Manual on Grooming –
12 Uniform – Equipment, under Additional Guidelines pertaining to UNIFORM, "You [meaning Campus
13 Safety personnel] must be fully dressed and properly groomed **from the moment you clock in**",
14 including equipment. According to page 7 of CLAREMONT's Campus Safety Training Manual on
15 Grooming – Uniform – Equipment, under EQUIPMENT, "Campus Safety personnel are responsible for
16 the safekeeping and security of all department-issued equipment, such as two-way radio and flashlight in
17 their possession." Under the header **Duty Belt/Gear**, "*Unless otherwise directed, personnel are to wear
18 the department-issued duty belt and authorized gear at all times while on duty. The placement of the
19 gear items on the duty belt shall be in the following order, looking at the duty belt from left to right:
20 Belt Keeper—Key Pouch—Baton—Radio—Belt Keeper—Gloves—Belt Keeper—Handcuffs—Flashlight
21 —Mace—Metal Key Hook—Belt Keeper.* Under **Special Note**, "Unless otherwise directed by Direct of
22 Campus Safety, personnel may not take the department-issued baton and pepper spray off campus and
23 must secure these items in their employee locker space upon departure from campus." Thus,
24 CLAREMONT not only knew but also intended, as demonstrated by CLAREMONT's Campus Safety
25 Training Manual, its Campus Safety Personnel—including but not necessarily limited to Campus Safety
26 Officers, Corporals, Sergeants, and Dispatchers—to don their uniforms and equipment prior to clocking
27 in, i.e. off-the-clock —because Campus Safety personnel "must be fully dressed and properly groomed
28 **from the moment [they] clock in.**" Likewise, CLAREMONT not only knew but also intended, as
demonstrated by CLAREMONT's Campus Safety Training Manual, its Campus Safety Personnel—
including but not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and

1 Dispatchers—to doff their uniforms and equipment after to clocking out, i.e. off-the-clock—because
2 Campus Safety “personnel may not take the department-issued baton and pepper spray off campus and
3 must secure these items in their employee locker space upon departure from campus.” Therefore,
4 CLAREMONT owes waiting time penalties to MR. BUTLER, the Former Employees Class, and
5 applicable Aggrieved Employees for knowing and intending for them to don and doff their uniforms and
6 equipment off-the-clock, and more importantly for knowing and intending to not compensate MR.
7 BUTLER, the Former Employees Class, and applicable Aggrieved Employees for this off-the-clock
8 donning and doffing.

9 80. Due to the actual time MR. BUTLER worked compared to his inaccurate payroll records, on
10 information and belief, other Aggrieved Employees and the Former Employees Class experienced the
11 same unlawful conduct perpetrated upon them by DEFENDANTS.

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

14 82. Summarily, DEFENDANTS continue to willfully fail to pay MR. BUTLER, the Non-Exempt
15 Employees Wage Class, the Former Employees Class and other Aggrieved Employees all of their earned
16 and yet unpaid wages without abatement or reduction due upon separation of employment, including but
17 not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as
18 reporting time, requested sick leave, and/or vacation pay due to (a) working off-the-clock to don and
19 doff their campus safety uniforms and equipment such as protective gear including but not limited to a
20 ballistic vest; (b) being on-call during rest and meal breaks because Aggrieved Employees and the
21 Premium Pay Class did not have a legitimate opportunity to take such uninterrupted, especially those
22 who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to not only
23 keep their radios powered on with audible volume but also respond to radio notices regardless of
24 whether they were on a rest or meal break; and (c) due to CLAREMONT’s policy, procedure, and/or
25 practice of utilizing an uneven rounding system that resulted in, over a period of time, DEFENDANTS’
26 failure to compensate the Non-Exempt Wage Class and Aggrieved Employees properly for all the time
27 they actually worked.

28 83. Thus, DEFENDANTS violated and continue to violate Labor Code § 203. As a result,
DEFENDANTS are not only liable for statutory waiting time penalties to MR. BUTLER and the Former
Employees Class, but also are liable for the attendant PAGA penalties to MR. BUTLER and Aggrieved
Employees under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2), which states,

1 “For all provisions of this code except those for which a civil penalty is specifically provided, there is
2 established a civil penalty for a violation of these provisions, as follows: (2) If, at the time of the alleged
3 violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for
4 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
5 aggrieved employee per pay period for each subsequent violation.

6 **FOURTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

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

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

9 84. MR. BUTLER incorporates paragraphs 1 through 83 of this complaint as if fully alleged herein,
10 and pleads the following on behalf of himself and Aggrieved Employees against ONLY CLAREMONT:

11 85. Labor Code § 204(a) reads in relevant part “All wages, other than those mentioned in Section
12 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice
13 during each calendar month, on days designated in advance by the employer as the regular paydays.
14 Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
15 between the 16th and the 26th day of the month during which the labor was performed, and labor
16 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between
17 the 1st and 10th day of the following month...”

18 86. Per Labor Code § 204(b)(1), “Notwithstanding any other provision of this section, all wages
19 earned for labor in excess of the normal work period shall be paid no later than the payday for the next
20 regular payroll period.

21 87. Under Labor Code § 204(b)(2), “An employer is in compliance with the requirements of
22 subdivision (a) of § 226 relating to total hours worked by the employee, if hours worked in excess of
23 normal work period during the current pay period are itemized as corrections on the paystub for the next
24 regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive
25 dates of the pay period for which the employer is correcting its initial report of hours....”

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

89. Despite the mandates of § 204, CLAREMONT did not abide by § 204(a) because
CLAREMONT did not pay twice during each calendar month “[a]ll wages, other than those mentioned
in § 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...on days designated in

1 advance by the employer as the regular paydays.” Though CLAREMONT paid MR. BUTLER and other
2 Aggrieved Employees wages twice during each calendar month, CLAREMONT failed to timely pay **all**
3 applicable wages earned by Aggrieved Employees, including MR. BUTLER.

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

19 91. Labor Code § 204, § 204(a), and § 204(b) is not just about the frequency by which an employer
20 pays its employees, it is also about the accuracy of those wages periodically paid. Therefore,
21 CLAREMONT violated Labor Code § 204, § 204(a), and § 204(b) and is subject to PAGA penalties for
22 CLAREMONT violating each section and subsection under Labor Code § 2699.3(a) and § 2699.5 in
23 accordance with section 2699.3(f)(2), i.e. the civil penalty is one hundred dollars (\$100) for each
24 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
25 aggrieved employee per pay period for each subsequent violation.

26 **FIFTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

27 **PAGA Civil Penalties Under Labor Code § 210 Due To § 204, § 204(b) And § 1197.5 Violations** 28 **(By Aggrieved PAGA Employees Which Includes MR. BUTLER)**

92. MR. BUTLER incorporates paragraphs 1 through 91 of this complaint as if fully alleged herein,
and pleads the following on behalf of Aggrieved Employees against ONLY CLAREMONT:

93. Labor Code § 210 states, “(a) In addition to, and entirely independent and apart from, any other

1 penalty provided in this article, **every person** who fails to pay the wages of each employee as provided
2 in §§ 201.3, **204, 204b**, 204.1, 204.2, 204.11, 205, 205.5, and **1197.5**, shall be subject to a penalty as
3 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
4 (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
5 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. (b) The penalty
6 shall either be recovered by the employee as a statutory penalty pursuant to § 98...(c) An employee is
7 only entitled to either recover the statutory penalty provided for in this section or to enforce a civil
8 penalty as set forth in subdivision (a) of § 2699, but not both, for the same violation.

9 94. Due to CLAREMONT's violations of § 204 and § 204(b) (*supra*) and § 1197.5 (*infra*),
10 CLAREMONT is subject to civil penalties under § 210(a).

11 95. MR. BUTLER has yet to decide whether to pursue § 210 penalties statutorily under § 98 or as
12 a civil penalty pursuant to § 2699(a) because at this time he does not know which penalties is higher.

13 96. Therefore, MR. BUTLER, on behalf of himself, and other Aggrieved Employees reserves their
14 rights to seek § 210 penalties for CLAREMONT's violations of § 204, § 204(b), and § 1197.5 under
15 PAGA, while reserving the right to alternatively pursue such as a statutory penalty pursuant to § 98
16 instead.

17 97. According to Labor Code § 211, a demand is a prerequisite to the bringing of any action under
18 Labor Code § 210 or § 211. MR. BUTLER's PAGA Notice also served as the demand required by
19 Labor Code § 211 in which MR. BUTLER demanded, on behalf of himself and other Aggrieved
20 Employees, that CLAREMONT pay the highest calculatable penalties under § 210, as well as
21 CLAREMONT pay all wages due to MR. BUTLER, Aggrieved Employees, and the Class under § 204
22 and/or § 1197.5 that CLAREMONT failed to pay.

23 **SIXTH CAUSE OF ACTION AGAINST CLAREMONT ONLY**

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

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

26 98. MR. BUTLER incorporates paragraphs 1 through 97 of this complaint as if fully alleged herein,
27 and pleads the following on behalf of himself and Aggrieved Employees against ONLY CLAREMONT
28 pursuant to Labor Code § 2699.3, as well as § 2699.5 which specifically enumerates § 206 under PAGA:

29 **§ 206(a)**

30 99. Labor Code § 206(a) states, "In case of a dispute over wages, the employer shall pay, without
condition and within the time set by this article, all wages, or parts thereof, conceded by him[/her/it] to

1 be due, leaving to the employee all remedies he[/she] might otherwise be entitled to as to any balance
2 claimed. A 'good faith dispute' that any wages are due occurs when an employer presents a defense,
3 based in law or fact, which, if successful, would preclude any recovery on the part of the employee...
4 Defenses presented which, under all the circumstances, are unsupported by any evidence, are
5 unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute. 8 C.C.R. §
6 13520(a). On July 29, 2019, MR. BUTLER sent Devin Romanio, HR Business Partner for
7 CLAREMONT, an email informing CLAREMONT of the minimum 0.75 overtime wages MR.
8 BUTLER undoubtedly knew he was owed because he worked such during his final pay period, but that
9 CLAREMONT had not paid him in his final paycheck. Devin Romanio did not claim to MR. BUTLER
10 that CLAREMONT did not owe him 0.75 hours of overtime pay. Instead, Devin Romanio, who
11 consistently ignored CLAREMONT employee complaints and inquiries, unsurprisingly ignored MR.
12 BUTLER's request. When a person makes a statement in the presence of a party to an action under
13 circumstances that would normally call for a response if the statement were untrue, the statement is
14 admissible for the limited purpose of showing the party's reaction to it. His silence, evasion, or
15 equivocation may be considered as a tacit admission of the statements made in his presence." *In re*
16 *Estate of Neilson* (1962) 57 Cal.2d 733, 746. Through Mr. Romanio's evasion and silence,
CLAREMONT tacitly conceded CLAREMONT owes MR. BUTLER wages of at least 0.75 hours of
overtime.

17 100. Under the above circumstances, there is no reasonable defense(s) CLAREMONT can
18 present to justify that a good faith dispute exists regarding at least the 0.75 hours of wages due by
19 CLAREMONT to MR. BUTLER; no evidence supports such defense(s). In failing to pay MR BUTLER
20 0.75 hours of overtime, CLAREMONT violated Labor Code § 206.

21 101. Furthermore, on March 5, 2015, in LWDA case no. LWDA-CM-301358-17, Barbara
22 Erwin filed a PAGA Notice against Claremont University Consortium (CUC) apprising CUC, the name
23 by which CLAREMONT is formerly known, of its unlawful conduct that violated numerous Labor Code
24 sections enumerated within that PAGA Notice. Approximately 2 years and 7 months later, on October 6,
25 2017, Lance Gregory Leach did the same in LWDA case no. LWDA-CM-339861-17 and the operative
26 complaint for the LEACH lawsuit. These two PAGA claims/case(s), in combination with LEACH's
27 lawsuit, MR. BUTLER's PAGA Notice and MR. BUTLER'S ignored request to CLAREMONT's Mr.
28 Romanio for MR.BUTLER's final paycheck to be corrected, as well as this action demonstrate
CLAREMONT cannot dispute in good faith the fact CLAREMONT owes Aggrieved Employees wages.

1 102. However, to this date, CLAREMONT either unreasonably or in bad faith, has yet to pay
2 MR. BUTLER and, on information and belief, has also yet to pay Aggrieved Employees all of their
3 undisputed wages, including those earned when donning and doffing their uniform on CLAREMONT's
4 premises off-the-clock.

5 **§ 206(b) Penalty Notice**

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

11 104. Pursuant to Labor Code § 2699(a), "Notwithstanding any other provision of law, any
12 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
13 Workforce Development Agency **or** any of its departments, divisions, **commissions**, boards, agencies,
14 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action
15 brought by an aggrieved employee on behalf of himself or herself and other current or former employees
16 pursuant to the procedures specified in Section 2699.3.

17 105. MR. BUTLER, on behalf of himself and other Aggrieved Employees, through his PAGA
18 Notice and any Amended PAGA Notice stepped/d into the role of the Labor Commission to pursue civil
19 penalties on behalf of the LWDA, Labor Commission, and/or the State of California, and through
20 discovery will investigate the claims alleged in this operative complaint. Upon determining the validity
21 of any employee's claim for wages, i.e. MR. BUTLER'S, that of other Aggrieved Employees and the
22 Non-Exempt Employees Wages Class, should CLAREMONT fail to pay these employees wages within
23 10 days after judgment, MR. BUTLER on behalf of Aggrieved Employees shall motion upon the court
24 to order CLAREMONT to pay the **penalty** of treble the amount of any "damages accruing to"
Aggrieved Employees including MR. BUTLER, as a direct and foreseeable consequence of such failure
to timely pay such wages.

25 106. According to its most recently file I.R.S. 990 Form, CLAREMONT is an established
26 non-profit public benefit corporation employing roughly 450 employees and net assets worth
27 approximately \$120 million, clearly CLAREMONT is able to pay MR. BUTLER and Aggrieved
28 Employees the wages owed to them.

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

6 **SEVENTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

7 **PAGA Civil Penalties For Labor Code § 206.5 Violation**

8 **(By Aggrieved PAGA Employees Which Includes MR. BUTLER And The Class)**

9 108. MR. BUTLER incorporates paragraphs 1 through 107 of this complaint as if fully alleged
10 herein, and pleads the following on behalf of himself, the Non-Exempt Employees Wage Class and
11 Aggrieved Employees against ONLY CLAREMONT:

12 109. Labor Code § 206.5(a) states in relevant part, "(a) An employer shall not require the
13 execution of a release of a claim or right on account of wages due, or to become due...unless payment of
14 those wages has been made. A release required or executed in violation of the provisions of this section
15 shall be null and void as between the employer and the employee...(b) For purposes of this section,
16 "execution of a release" includes requiring an employee, as a condition of being paid, to execute a
17 statement of the hours he or she worked during a pay period which the employer knows to be false.

18 110. "Section 206.5 prohibits an employer from requiring an employee to release a claim for
19 wages that are due and unpaid unless it has paid those wages. (§ 206.5, subd. (a).)^[27] Section 206.5 thus
20 provides an exception to a general release of wage claims—known or unknown. That exception is
21 limited, however. Wages are not considered "due" under the statute if the employer and employee have
22 "a bona fide dispute" as to whether they are owed. (*Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.
23 4th 796, 803 (*Chindarah*)).) Section 206.5 therefore does not preclude an employer and employee from
24 "'compromis[ing] a bona fide dispute over wages.'" (*Chindarah*, at pp. 801, 803 [finding release valid
25 and explaining that, although statutory right to receive overtime is unwaivable, no statute prevents an
26 employee from releasing "his claim to past overtime wages as part of a settlement of a bona fide dispute
27 over those wages"].) Accordingly, an employer may obtain a valid release as part of a compromise of an
28 employee's wage claim, without paying the full amount of wages claimed, if the employer has a good
faith dispute that it does not owe the unpaid wages. (*Watkins v. Wachovia Corp.* (2009) 172 Cal.App.4th
1576, 1587 (*Watkins*))."

111. CLAREMONT specifically required the execution of a release of a claim or right on

1 account of unpaid wages due to CLAREMONT's unlawful rounding system in its settlement in Leach v.
2 The Claremont Colleges, Inc. (TCC), Los Angeles Superior Court case number BC686451 ("LEACH").
3 However, MR. BUTLER, on behalf of himself, the Class, and Aggrieved Employees contends that
4 although CLAREMONT disputed whether CLAREMONT owed the Leach Class additional wages due
5 to its rounding policy, CLAREMONT disputed such in bad faith, and thus a bona fide dispute over the
6 unpaid wages in the LEACH case did/does not exist. Therefore, the LEACH settlement requiring the
7 execution of a release of a claim or right on account of wages due, or to become due, is null and void as
8 between the employer, CLAREMONT in that case, and the employee(s) in the LEACH case because
9 payment of those wages was not made by CLAREMONT. In conjunction with Labor Code § 206.5,
10 under C.C.P. § 473(d), "The court may, upon motion of the injured party, or its own motion, correct
11 clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed,
12 and may, on motion of either party after notice to the other party, set aside any void judgment or order."
MR. BUTLER intends to bring such a motion under C.C.P. § 473(d) when so allowed by this Court.

13 112. CLAREMONT's Labor Code § 206.5 violation also means CLAREMONT is also liable
14 to MR. BUTLER and other Aggrieved Employees for attendant PAGA penalties under Labor Code §
15 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2), i.e. the civil penalty is one hundred dollars
16 (\$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.

17 **EIGHTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

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

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

20 113. MR. BUTLER incorporates paragraphs 1 through 112 of this complaint as if fully alleged
21 herein, and pleads the following on behalf of himself and Aggrieved Employees against ONLY
22 CLAREMONT:

23 114. Labor Code § 208 mandates "Every employee who is discharged shall be paid at the
24 place of discharge, and every employee who quits shall be paid at the office or agency of the employer
25 in the county where the employee has been performing labor. **All payments shall be made in the**
26 **manner provided by law.**" Given the plain meaning of the mandatory language "[a]ll payments shall be
27 made in the manner provided by law", California's Legislator did not intent Labor Code § 208 to
28 narrowly pertain only to the place at which an employer pays final wages. Otherwise, California's
Legislature would have drafted Labor Code § 208 to state "All payments shall be made in the manner

provided by this section” or “All payments shall be made at the location provided by this section.” Instead, Labor Code § 208 pertains generally to Chapter 1 of California’s Labor Code titled Payment of Wages, i.e. Labor Code §§ 200-273 . Therefore, the “manner” of payment encompasses time, place, and accuracy or inaccuracy such as underpayment of wages MR. BUTLER, the Non-Exempt Employees Wages Class, and Aggrieved Employees suffered due to CLAREMONT’s conduct because the law provides for such in which the payment of wages is done or happens. Although MR. BUTLER does not know whether CLAREMONT paid other employees at the appropriate place(s) enumerated in Labor Code § 208, due to the other wage payment(s) violations detailed in this operative complaint, for example 201, 202, 203, 226, etc., CLAREMONT nevertheless failed to make all payments “in the manner provided by law”, including timely, accurate and complete payments, for example the 0.75 overtime hours for which MR. BUTLER specifically requested payment on July 29, 2019, in addition to the wages owed to the Non-Exempt Employees Wages Class and applicable Aggrieved Employees already detailed above.

115. As a result of failing to provide “all payments” to Aggrieved Employees “in the manner provided by law”, CLAREMONT violated Labor Code § 208 and is liable to MR. BUTLER and other Aggrieved Employees for attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5, which specifically enumerated Labor Code § 208, in accordance with § 2699.3(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.

NINTH CAUSE OF ACTION AGAINST ONLY CLAREMONT

PAGA Civil Penalties For Labor Code § 213 Violation

(By Aggrieved PAGA Employees Which Includes MR. BUTLER)

116. MR. BUTLER incorporates paragraphs 1 through 115 of this complaint as if fully alleged herein, and pleads as follows on behalf of Aggrieved Employees against ONLY CLAREMONT pursuant to Labor Code § 2699.3, as well as § 2699.5 which specifically enumerates § 206 under PAGA:

117. Under Labor Code § 213(d), an employer is not prohibited “from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee’s choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an 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
9 employee is entitled to his or her wages at the time of quitting.

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

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

21 **TENTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

22 **PAGA Civil Penalties For Labor Code § 223 Violation**

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

24 120. MR. BUTLER incorporates paragraphs 1 through 119 of this complaint as if fully alleged
25 herein, and pleads the following on behalf of Aggrieved Employees against ONLY CLAREMONT:

26 121. Under Labor Code § 223 “Where any statute or contract requires an employer to maintain
27 the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the
28 wage designated by statute or by contract.”

122. Under California law, MR. BUTLER, other Aggrieved employees, and the Non-Exempt
Employees Wages Class was/were entitled to compensation for all hours worked.

123. In this case, CLAREMONT was both statutorily required to pay at least minimum wage

1 pursuant to Labor Code § 1182.12, as well as obligated to pay MR. BUTLER, other Aggrieved
2 employees, and the Non-Exempt Employees Wages Class their contractually agreed upon wages which
3 were at least minimum wage.

4 124. CLAREMONT was contractually obligated to pay MR. BUTLER, other Aggrieved
5 Employees, and the Non-Exempt Employees Wages Class agreed rates in excess of California's
6 minimum wage for all hours worked. However, in requiring its Campus Safety Officers, Corporals, and
7 Sergeants to don and doff their uniform and equipment off-the-clock, CLAREMONT effectively
8 unlawfully secretly paid a lower hourly wage for all hours worked than these employees were
contractually entitled to.

9 125. Furthermore, CLAREMONT's policy, procedure, and/or practice of utilizing an uneven
10 Rounding system (which MR. BUTLER learned of only through the LEACH lawsuit after MR.
11 BUTLER quit CLAREMONT's employment) resulted in, over a period of time, CLAREMONT's
12 failure to compensate MR. BUTLER, the Non-Exempt Employees Wages Class, and Aggrieved
13 Employees, properly for all the time they actually worked. Thus, CLAREMONT secretly paid MR.
14 BUTLER, the Non-Exempt Employees Wage Class, and Aggrieved Employees a lower wage while
15 purporting to pay the wage scale designated by statute, i.e. California's minimum wage statute and
16 overtime wage statute(s), or by contract. See *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314.

17 126. The combined force of California Labor Code sections 221, 222, and 223 clearly
18 prohibits an employer from receiving from the employee, withholding from the employee, or secretly
19 paying to the employee, some amount less than the employee's contractual or statutory wages for work
20 performed by the employee. *Armenta v. Osmose, Inc.* (2005) 37 Cal.Rptr.3d 460, 465. Because MR.
21 BUTLER, other Aggrieved Employees, and the Exempt-Employees Wages Class were employed at
22 agreed rates in excess of California's minimum wage (Labor Code § 1182.12), CLAREMONT
23 effectively 'reduce' or 'withhold' a portion of an employees' contractual or statutory wages through the
simple device of requiring work in excess of the daily or weekly hours CLAREMONT actually
compensated them without additional compensation.

24 127. California Labor Code sections 221, 222, and 223 prevent CLAREMONT from using any
25 part of the wage payments that are required under contract for activities that are compensated in an
26 amount that equals or exceeds the minimum wage, as a credit for satisfying minimum wage obligations
27 for those activities that are compensated at less than the minimum wage or under contractual rates.

28 128. Thus, CLAREMONT violated Labor Code § 223 and is subject to PAGA penalties for so

1 doing pursuant to Labor Code § 225.5.

2 **ELEVENTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

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

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

5 129. MR. BUTLER incorporates paragraphs 1 through 128 of this complaint as if fully alleged
6 herein, and pleads the following on behalf of himself and Aggrieved Employees against ONLY
7 CLAREMONT:

8 130. Under Labor Code § 225.5, “In addition to, and entirely independent and apart from, any
9 other penalty provided in this article, every person who unlawfully withholds wages due any employee
10 in violation of § 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any
11 initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each
12 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
13 to pay each employee, plus 25 percent of the amount unlawfully withheld. The penalty shall be
14 recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or
15 in an independent civil action. The action shall be brought in the name of the people of the State of
16 California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of
17 the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into
18 a fund within the Labor and Workforce Development Agency dedicated to educating employers about
19 state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General
20 Fund. MR. BUTLER and Aggrieved Employees, in the name of the people of the State of California and
21 the Labor Commissioner, seek the civil penalty under § 225.5.

22 131. As explained above, CLAREMONT violated § 223 (*supra*).

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

28 **TWELFTH CAUSE OF ACTION AGAINST DEFENDANTS**

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

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

133. MR. BUTLER incorporates paragraphs 1 through 132 of this complaint as if fully alleged

1 herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Wage
2 Statement Class against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds liable any
3 employer or other person—who is an owner, director, officer, or managing agent of the employer —
4 acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 226.

5 **Labor Code § 226(a) Violation**

6 134. Under Labor Code § 226(a) “Every employer shall, semimonthly or at the time of each
7 payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft,
8 or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash,
9 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
10 employee...(4) all deductions, provided that all deductions made on written orders of the employee may
11 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
12 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
13 social security number or an employee identification number other than a social security number, (8) the
14 name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during
15 the pay period and the corresponding number of hours worked at each hourly rate by the employee and
16 ...The deductions made from payment of wages shall be recorded in ink or other indelible form, properly
17 dated, showing the month, day, and year, and a copy of the statement and the record of the deductions
18 shall be kept on file by the employer for at least three years at the place of employment or at a central
19 location within the State of California. For purposes of this subdivision, “copy” includes a duplicate of
20 the itemized statement provided to an employee or a computer-generated record that accurately shows
21 all of the information required by this subdivision.”

22 135. MR. BUTLER’S and, on information and belief, that of other Aggrieved Employees and
23 of the Wage Statement Class’ pay records reconciled against their Kronos time records, plus on-call
24 work though meal and rest breaks, as well as off-the-clock work for donning and doffing their
25 mandatory equipment and uniforms, combined with CLAREMONT’s use of an uneven rounding system
26 that resulted in, over a period of time, DEFENDANTS’ failure to compensate MR. BUTLER, other
27 Aggrieved Employees, and the Non-Exempt Employees Wages Class properly for all the time they
28 actually worked prove DEFENDANTS failed to provide MR. BUTLER, other Aggrieved Employees
and the Wage Statement Class with accurately written itemized statements showing “(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

1 the corresponding number of hours worked at each hourly rate by the employee” because
2 DEFENDANTS failed to accurately pay MR. BUTER, other Aggrieved Employees, the Non-Exempt
3 Employees Wages Class and the Wage Statement Class all earned and unpaid wages, including but not
4 necessarily limited to minimum, regular, overtime, and/or double time wages; premium wages; reporting
5 time pay; requested but denied sick leave pay; and/or unpaid accrued or should have been accrued
6 vacation pay due to (a) working off-the-clock to don and doff their campus safety uniforms and
7 equipment like protective gear including a ballistic vest; (b) being on-call during rest and meal breaks
8 because MR. BUTLER, other Aggrieved Employees, and the Premium Pay Class did not have a
9 legitimate opportunity to take such uninterrupted, especially employees who were/are Campus Safety
10 Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on
11 with audible volume but also monitor and respond to radio notices regardless of whether they were on a
12 rest or meal break; and (c) due to CLAREMONT’s policy, procedure, and/or practice of utilizing an
13 uneven rounding system that resulted in, over a period of time, DEFENDANTS’ failure to compensate
14 MR. BUTLER, other Aggrieved Employees, and the Non-Exempt Employees Wages Class properly for
15 all the time they actually worked. Additionally, Wage Statement Class member were injured due to
16 CLAREMONT listing TCCS instead of TCC or CUC prior to January 1, 2018 as the name of the legal
17 entity that is the employer.

Labor Code § 226(e) Remedy

18 136. As a result, DEFENDANTS are liable to MR. BUTLER and the Wage Statement Class
19 under Labor Code § 226(e)(1) which states, “An employee suffering injury as a result of a knowing and
20 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all
21 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
22 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an
23 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
24 attorney’s fees.”

Labor Code § 226(e)(2)(B) Injury

25 137. According to Labor Code § 226(e)(2)(B) “An employee is deemed to suffer injury for
26 purposes of this subdivision if the employer fails to provide accurate and complete information as
27 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
28 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

1 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
2 inclusive, (6), and (9) of subdivision (a). (ii) Which deductions the employer made from gross wages to
3 determine the net wages paid to the employee during the pay period...(iii) The name and address of the
4 employer...(iv) The name of the employee and only the last four digits of his or her social security
5 number or an employee identification number other than a social security number.

6 138. Per Labor Code § 226(e)(2)(C) “For purposes of this paragraph, “promptly and easily
7 determine” means a reasonable person would be able to readily ascertain the information without
8 reference to other documents or information.”

9 139. MR. BUTLER, other Aggrieved Employees, and the Wage Statement Class have
10 suffered injury pursuant to § 226(e)(2)(B) because, per § 226(e)(2)(B)(i), CLAREMONT failed “to
11 provide accurate and complete information as required by any one or more of items (1) to (9), inclusive,
12 of” § 226(a) (*supra*) and MR. BUTLER, other Aggrieved Employees, and the Wage Statement Class
13 cannot promptly and easily determine from the wage statement alone the amount of the gross wages
14 and/or net wages paid or what should have been paid to them to them during the pay period or any of the
15 other information required to be provided on the itemized wage statement pursuant § 226(a), specifically
16 “(1) gross wages earned, (2) total hours worked by the employee...(5) net wages earned,..(8) the name
17 and address of the legal entity that is the employer...[and] (9) all applicable hourly rates in effect during
18 the pay period and the corresponding number of hours worked at each hourly rate by the employee.”
19 Specifically, Wage Statement Class member were injured due to CLAREMONT listing TCCS instead of
20 TCC or CUC prior to January 1, 2018 as the name of the legal entity that is the employer.

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

1 141. Furthermore, MR. BUTLER, other Aggrieved Employees, and the Wage Statement
2 Class have suffered injury pursuant to § 226(e)(2)(B) because, per Labor Code § 226(e)(2)(B)(iii),
3 DEFENDANTS failed to list the applicable legal name of the employer. The name of the employer
4 listed on MR. BUTLER's, and on information and belief, the other Aggrieved Employees' and that of
5 the Wage Statement Class' itemized wage statements is "The Claremont Colleges Services" or "TCCS"
6 when the current legal name of the employer is "The Claremont Colleges, Inc." (TCC) and the former
7 legal name of the employer was "Claremont University Consortium" (CUC) prior to January 1, 2018.

8 142. MR. BUTLER, other Aggrieved Employers, and the Wage Statement Class cannot
9 "promptly and easily determine" the employer's legal name, i.e. TCC or CUC when applicable, because
10 they had to, like other reasonable persons would have to, reference other documents or information
11 because the employer's name is not readily ascertainable without referring to public court records and/or
12 to California State Secretary records. For this case, the wage statements of MR. BUTLER, other
13 Aggrieved Employees, and the Wage Statement Class all demonstrate TCCS is the employer even
14 though TCC actually is and CUC was prior to January 1, 2018. The true identity of the actual employer,
15 i.e. TCC fka CUC not TCCS, is not information a reasonable person would be able to readily ascertain
16 without reference to other documents or information. MR. BUTLER'S attorney had to refer to the
17 California's Secretary of State's Statement of Information for TCC and/or the Leach lawsuit to
18 determine the legal identity of TCCS is TCC fka CUC. Thus, the true identity of the employer is not
19 promptly and easily determined, causing injury to MR. BUTLER, other Aggrieved Employees, and the
20 Wage Statement Class.

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

23 144. In addition to § 226(e) statutory penalties, CLAREMONT is also liable to MR. BUTLER
24 and other Aggrieved Employees for attendant PAGA penalties under § 226.3 (*infra*) for violating §
25 226(a).

26 **THIRTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

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

28 **(By MR. BUTLER, and possibly other Aggrieved Employees or Class members)**

145. MR. BUTLER incorporates paragraphs 1 through 144 of this complaint as if fully
alleged herein, and pleads the following on behalf of himself, and on information and belief, on behalf
of other Aggrieved Employees against DEFENDANTS.

1 146. Under Labor Code § 226(b) “An employer that is required by this code or any
2 regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford
3 current and former employees the right to inspect or receive a copy of **records pertaining to their**
4 **employment**, upon reasonable request to the employer...” TCC fka CIC is an employer subject to Labor
5 Code § 226(a). Apparently from the plain language of the statute, Labor Code § 226(b) does not require
6 employees to specifically request payroll records, only “records pertaining to their employment”.

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

10 148. Pre-litigation, on Monday, July 29, 2019 at 11:00 am, MR. BUTLER emailed Mr.
11 Romanio, informing both Mr. Romanio and CLAREMONT through Mr. Romanio of the following pay
12 issue and a reasonable request to receive a copy of records pertaining to his employment: “Sir, Thank
13 you, I received the check this morning; however, I did notice a discrepancy. Attached is a screen shot of
14 my worked hours via Kronos and a screen shot of my pay slip. My worked hours are 74.15 hours. My
15 pay slip states 72.07 regular hours and 1.33 overtime hours for a total of 73.4 hours. Time discrepancy -
16 $74.15 - 73.4 = 0.75$ overtime hours. May the pay discrepancy be corrected please? In addition, may I
17 have a copy of my employee file TCCS has on my employment to include all annual performance
18 evaluations? Thank you in advance.”

19 149. Not only did CLAREMONT and Mr. Romanio fail to comply with this request within 21
20 calendar days, Mr. Romanio and CLAREMONT through Mr. Romanio, completely ignored MR.
21 BUTLER’s request for “a copy of [his] employee file CLAREMONT’S has on [his] employment to
22 include all annual performance evaluations”, i.e. utterly disregarded MR. BUTLER’S right under §
23 226(b). However this does not surprise MR. BUTLER given Romanio's pattern of ignoring
24 CLAREMONT employees’ complaints and inquiries. Thus, CLAREMONT through Mr. Romanio,
25 violated or caused to be violated Labor Code § 226, specifically subsections (b) and (c).

26 150. Given his own experience of being ignored by CLAREMONT and Mr. Romanio in
27 reasonably requesting records under Labor Code § 226(b) and § 1198.5 (infra), MR. BUTLER believes
28 CLAREMONT also likely violated the §§ 226(b) and (c) rights of other Aggrieved Employees.

 151. Even if other Aggrieved Employees have not requested employee records under § 226(b)

1 and § 226(c), CLAREMONT nevertheless liable under Labor Code § 558.1 to MR. BUTLER for the
2 statutory penalty pursuant to Labor Code § 226(f), as well as attorney's fees under § 226(h), for non-
3 compliance with § 226(b) and § 226(c).

4 152. Under § 226(f), "A failure by an employer to permit a current or former employee to
5 inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or
6 former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty
7 from the employer."

8 153. Under § 226(h), "An employee may also bring an action for injunctive relief to ensure
9 compliance with this section and is entitled to an award of costs and reasonable attorney's fees."
10 Therefore, MR. BUTLER seeks injunctive relief ordering DEFENDANTS to afford MR. BUTLER,
11 other former employees, and current employees the right to inspect or receive a copy of records
12 pertaining to their employment, upon reasonable request to CLAREMONT.

13 154. CLAREMONT is also liable for civil penalties per Labor Code § 2699.3 (PAGA) due to
14 its violation of § 226(b) and (c).

15 **FOURTEENTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

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

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

18 155. MR. BUTLER incorporates paragraphs 1 through 154 of this complaint as if fully alleged
19 herein, and pleads the following on behalf of himself and other Aggrieved Employees against ONLY
20 CLAREMONT:

21 156. Under Labor Code § 226.3 "Any employer who violates subdivision (a) of § 226 shall
22 be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
23 in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
24 citation, for which the employer fails to provide the employee a wage deduction statement or fails to
25 keep the records required in subdivision (a) of § 226. The civil penalties provided for in this § are in
26 addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall
27 take into consideration whether the violation was inadvertent, and in his or her discretion, may decide
28 not to penalize an employer for a first violation when that violation was due to a clerical error or
inadvertent mistake."

157. Though CLAREMONT provided MR. BUTLER, other Aggrieved Employees, and the
Wage Statement Class with wage deduction statements, these statements were not code compliant. Also,

CLAREMONT “fail[ed] to keep the records required by subdivision (a) of § 226” because CLAREMONT’s § 226 records are inaccurate as explained under the twelfth cause of action (*supra*) enumerated in this operative complaint.

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

FIFTEENTH CAUSE OF ACTION AGAINST DEFENDANTS

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

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

159. MR. BUTLER incorporates paragraphs 1 through 158 of this complaint as if fully alleged herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Premium Pay Class against DEFENDANTS who may be held liable under § 558.1(a), which states in relevant part “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, Section...226.7...may be held liable as the employer for such violation.

160. According to Labor Code § 226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant 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.”

161. Under Labor Code § 226.7(c) “If an employer fails to provide an employee a meal or rest or recovery period in accordance with 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, the employer shall pay 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.”

162. 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.

163. Under Labor Code § 226.7(e), “This section shall not apply to an employee who is

1 exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but
2 not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

3 164. Though MR. BUTLER was a security guard licensed by California's Bureau of Security
4 and Investigative Services from August 1, 2013 to August 31, 2019, the provisions of Labor Code §
5 226.7(f)¹ should not apply to this action because CLAREMONT does not appear to be registered
6 pursuant to the Private Security Services Act (Chapter 11.5 (commencing with Section 7580) of
7 Division 3 of the Business and Professions Code) as a private patrol operator. Even if CLAREMONT is
8 so registered, on information and belief, CLAREMONT's employees are not covered by a valid
9 collective bargaining agreement in compliance with Labor Code § 226.7(f)(3). Moreover, subdivision (f)
10 of Labor Code § 226.7 "does not apply to existing cases filed before January 1, 2021." This action was
11 filed before January 1, 2021, therefore Labor Code § 226.7(f) is inapplicable.

12 165. In seeking the statutory penalty under Labor Code § 226.7(c), this action is similar to
13 *Augustus v. ABM Security Services, Inc.*, in which California's Supreme Court confirmed Labor Code §
14 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest periods. The same is true of meal
15 periods. "...[E]mployers must relieve their employees of all duties and relinquish any control over how
16 employees spend their break time." See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
17 1004, 1038-1039 and *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 259. Employee meal
18 and rest periods are to be duty free, timely, and uninterrupted.

19 166. Similar to *ABM Security Services*, CLAREMONT failed to provide MR. BUTLER, other
20 Aggrieved Employees, and the Premium Pay Class with legitimate opportunities to take Labor Code
21 compliant meal (§ 512) and rest (IWO 4-2001 § 12) breaks each workday because meal and rest breaks
22 were interrupted, late, and/or missed. CLAREMONT expected MR. BUTLER, Aggrieved Employees,
23 and the Premium Pay Class who were/are Campus Safety Officers, Corporals, Sergeants, and/or

24 ¹ Labor Code § 226.7(f)(1) states, "An employee employed in the security services industry as a security officer who is
25 registered pursuant to the Private Security Services Act (Chapter 11.5 (commencing with Section 7580) of Division 3 of the
26 Business and Professions Code) and who is employed by a private patrol operator registered pursuant to that chapter, may be
27 required to remain on the premises during rest periods and to remain on call, and carry and monitor a communication device
28 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 Dispatchers to stay on CLAREMONT premises during rest breaks, remain on call and alert during meal
2 and rest breaks, and monitor a radio or other communication device during meal and rest breaks.
3 According to page 8 of CLAREMONT's Campus Safety Training Manual on Grooming – Uniform –
4 Equipment, under **Radio Hand-Mic/ Earpiece** pertaining to EQUIPMENT, "Unless otherwise directed,
5 a department issued two-way radio hand-mic and earpiece shall be worn at all times. Personnel assigned
6 to Dispatch Center are exempt from wearing the earpiece, while at Dispatch."

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

12 168. As another result, CLAREMONT violated Cal. Code Regs., tit. 8, § 11040, subdivision
13 7(A)(3), which states "Every employer shall keep accurate information with respect to each employee
14 including the following: (3) Time records showing when the employee begins and ends each work
15 period. *Meal periods, split shift intervals and total daily hours worked shall also be recorded* [emphasis
16 added]. Meal periods during which operations cease and authorized rest periods need not be recorded."

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

1 10 hours in a workday after CLAREMONT implemented an alternative workweek schedule
2 consisting of four days, ten hours per day, and did not have a legitimate opportunity to take a
3 two meal periods of net 30-minutes unless a valid meal period waiver exists and/or three 10-
4 minutes net rest breaks timely and uninterrupted.

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

9 **SIXTEENTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

10 **Labor Code § 432.5 Violation**

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

12 171. MR. BUTLER incorporates paragraphs 1 through 170 of this complaint as if fully alleged
13 herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Premium Pay
14 Class against ONLY CLAREMONT:

15 172. Under Labor Code § 432.5 “No employer, or agent, manager...or officer thereof, shall
16 require any employee or applicant for employment to agree, in writing, to any term or condition which is
known by such employer, or agent, manager...or officer thereof to be prohibited by law.”

17 173. CLAREMONT’s employee handbook contains CLAREMONT’s meal and rest break
18 policies. Additionally, CLAREMONT’s Offer of Employment Letters that, if MR. BUTLER’s memory
19 is correct, prospective employees sign reference certain policies of CLAREMONT, including on
20 information and belief CLAREMONT’s meal and rest break policies. CLAREMONT’s handbook and
21 Offer of Employment Letters is/are the writing(s) by which CLAREMONT used to require MR.
22 BUTLER, Aggrieved Employees, and the Premium Pay Class including but not necessarily limited to
23 Campus Safety Officers, Corporals, Sergeants, and Dispatchers to not only keep their radios powered on
24 with audible volume but also respond to radio notices regardless of whether they were on a rest or meal
break.

25 174. This relevant policy contained also informed MR. BUTLER and other Aggrieved
26 Employees that CLAREMONT would pay MR. BUTLER and other Aggrieved Employees through their
27 lunches. However, the handbook failed to inform MR. BUTLER and other Aggrieved Employees of or
28

1 agreed to pay MR. BUTLER and other Aggrieved Employees premium wages for on-call/on-duty meal
2 and rest breaks.

3 175. CLAREMONT required MR. BUTLER, Aggrieved Employees, and the Premium Pay
4 Class—including but not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and
5 Dispatchers—to sign an acknowledgment of receipt of the aforementioned handbook, signature which
6 signified to CLAREMONT these employees' respective agreement to abide by the policies within
7 CLAREMONT's handbook.

8 176. As a result, CLAREMONT violated Labor Code § 432.5 for requiring employees to
9 agree to forgo Labor Code compliant meal and/or rest periods but receive less than the hour premium
10 pay to employees were/are lawfully entitled. Therefore, CLAREMONT is liable to MR. BUTLER and
11 other Aggrieved Employees for attendant PAGA penalties pursuant to Lab Code §2699.3(a) and §
12 2699.5.

13 **SEVENTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

14 **Labor Code § 510(a) Violation**

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

16 177. MR. BUTLER incorporates paragraphs 1 through 176 of this complaint as if fully alleged
17 herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Non-Exempt
18 Employees Wages Class against DEFENDANTS.

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

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

180. MR. BUTLER, other Aggrieved Employees, and Non-Exempt Employees Wages Class
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

1 scheduled shift began. According to page 5 of CLAREMONT's Campus Safety Training Manual on
2 Grooming –Uniform – Equipment, under Additional Guidelines pertaining to UNIFORM, "You
3 [meaning Campus Safety personnel] must be fully dressed and properly groomed **from the moment you**
4 **clock in**", including equipment. According to page 7 of CLAREMONT's Campus Safety Training
5 Manual on Grooming – Uniform –Equipment, under EQUIPMENT, "Campus Safety personnel are
6 responsible for the safekeeping and security of all department-issued equipment, such as two-way radio
7 and flashlight in their possession." Under the header **Duty Belt/Gear**, "*Unless otherwise directed,*
8 *personnel are to wear the department-issued duty belt and authorized gear at all times while on duty.*
9 *The placement of the gear items on the duty belt shall be in the following order, looking at the duty belt*
10 *from left to right: Belt Keeper—Key Pouch—Baton—Radio—Belt Keeper—Gloves—Belt Keeper—*
11 *Handcuffs—Flashlight—Mace—Metal Key Hook—Belt Keeper.* Under **Special Note**, "Unless otherwise
12 directed by Direct of Campus Safety, personnel may not take the department-issued baton and pepper
13 spray off campus and must secure these items in their employee locker space upon departure from
14 campus."

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

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

183. As a result, CLAREMONT is liable to MR. BUTLER and the Non-Exempt Employees

1 Wages Class for unpaid wages, including regular wages and overtime wages for any member of the
2 Non-Exempt Employees Wages Class who worked over 8 hours in a workday, or over 10 hours in a
3 workday for those subject to CLAREMONT's alternative workweek schedule explained *infra*.

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

6 **Aggrieved Employees Whom CLAREMONT Misclassified As Salary Exempt**

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

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

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

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

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

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

26 191. In order for an employee to legally be exempt from California’s overtime and double
27 time compensation laws, both a “duties test” and a “salary test” apply. The duties test focuses on the
28 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

1 title as per se exempt or nonexempt—the regulations identify job duties, not job. “A job title alone is
2 insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any
3 particular employee must be determined on the basis of whether the employee’s salary and duties meet
4 the requirements of the regulations...” Exemption depends “upon what an employee actually does on the
5 job”. Exemption must be based on how an employee actually spends his or her time, not on an idealized
6 job description.

7 **Job Duties & Salary Test**

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

- 11 (a) Whose duties and responsibilities involve the management of the enterprise in which he/she is
12 employed or of a customarily recognized department or subdivision thereof; **and**
13 (b) Who customarily and regularly directs the work of two or more other employees therein; **and**
14 (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as
15 to the hiring or firing and as to the advancement and promotion or any other change of status of other
16 employees will be given particular weight; **and**
17 (d) Who customarily and regularly exercises discretion and independent judgment; **and**
18 (e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting
19 exempt work and non-exempt work shall be construed in the same manner as such items are construed
20 in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29
21 C.F.R. §§ 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work
22 that is directly and closely related to exempt work and work which is properly viewed as a means for
23 carrying out exempt functions. The work actually performed by the employee during the course of the
24 workweek must, first and foremost, be examined and the amount of time the employee spends on such
25 work, together with the employer’s realistic expectations and the realistic requirements of the job, shall
26 be considered in determining whether the employee satisfies this requirement.
- 27 (f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state
28 minimum wage for full-time employment. Full-time employment is defined in Labor Code § 515(c) as
40 hours per week.”

27 **Misclassified As Exempt Campus Safety Sergeants & Managerial Dispatch Equivalents**

28 193. Although MR. BUTLER started as and remained an hourly-paid employee throughout his

1 employment with CLAREMONT and thus CLAREMONT did not misclassify MR. BUTLER, the
2 community of interest requirement for certification does not mandate that class members' claims be
3 uniform or identical. MR. BUTLER'S theories of liability does not depend on class members having
4 identical claims, nor does the law of class certification require such. (*Vasquez, supra*, 4 Cal.3d at p. 809,
5 94 Cal.Rptr. 796, 484 P.2d 964 [a community of interest does not depend upon an identical recovery"].)
6 *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. According to MR. BUTLER,
7 CLAREMONT pays and classifies Campus Safety Sergeants and their managerial counterparts in
8 Dispatch as salary exempt employees. These misclassified as salary-exempt Aggrieved Employees do
9 not "customarily and regularly exercise discretion and independent judgment" because these Aggrieved
10 Employees' actions, conduct, judgment, and thoughts are governed by CLAREMONT's policies, for
11 example CLAREMONT's General Orders. These Aggrieved Employees were also outranked by
12 Lieutenants and then Captains, whose judgment these Campus Safety Sergeants and their counterparts in
13 Dispatch had to follow. According to MR. BUTLER, these misclassified as salary-exempt Aggrieved
14 Employees definitely lacked "the authority to hire or fire other employees". The "suggestions and
15 recommendations as to the hiring or firing and as to the advancement and promotion or any other change
16 of status of other employees" by these misclassified as salary-exempt Aggrieved Employees would not
17 be "given particular weight". These misclassified as salary-exempt Aggrieved Employees were
18 outranked by Lieutenants and then Captains, whose "suggestions and recommendations as to the hiring
19 or firing and as to the advancement and promotion or any other change of status of other employees"
20 would overrule that of Campus Safety Sergeants and their counterparts in Dispatch. These misclassified
21 as salary-exempt Aggrieved Employees therefore did not primarily engaged in duties which meet the
22 test of the exemption. Moreover, Campus Safety Sergeants were not primarily engaged in the duties of
23 exemption because they spent a minimum of 55% to approximately 80% of their time routinely
24 patrolling as the Corporals and Campus Safety Officers did. Although MR. BUTLER started and
25 remained an hourly-paid employee throughout his employment with TCC and thus TCC did not
26 misclassify MR. BUTLER as non-exempt, the community of interest requirement for certification does
27 not mandate that class members' claims be uniform or identical. MR. BUTLER'S theories of liability
28 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." Mr. Butler and misclassified Sergeants are similarly situated because TCC required Mr.

1 Butler and Sergeants to don and doff their uniforms off the clock and respond to their radios regardless
2 of any meal and/or rest breaks. If Sergeants are indeed misclassified, then Mr. Butler and Sergeants are
3 similarly situated pertaining to rights to unpaid OT wages.

4 194. Consequently, DEFENDANTS violated Labor Code § 510 and are liable for earned but
5 unpaid overtime pay to misclassified employees, including but not necessarily limited to Campus
6 Safety Sergeants.

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

9 196. Under Labor Code § 558(a) “Any employer or other person acting on behalf of an
10 employer who violates, or causes to be violated, a section of this chapter [§§ 500-558.1] or any
11 provision regulating hours and days of work in any order of the Industrial Welfare Commission [IWO 4-
12 2001] shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
13 each underpaid employee for each pay period for which the employee was underpaid in addition to an
14 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars
15 (\$100) for each underpaid employee for each pay period for which the employee was underpaid in
16 addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this
section shall be paid to the affected employee.

17 **EIGHTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

18 **Labor Code § 511 Violation**

19 **(By the Non-Exempt Employees Wages Class and Aggrieved PAGA Employees)**

20 197. MR. BUTLER incorporates paragraphs 1 through 197 of this complaint as if fully alleged
21 herein, and pleads the following on behalf of other Aggrieved Employees and the Non-Exempt
22 Employees Wages Class against Defendants:

23 198. Under Labor Code § 511(a), “Upon the proposal of an employer, the employees of an
24 employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected
25 employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the
26 affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an
27 alternative workweek schedule shall be deemed adopted *only if* it receives approval in a secret ballot
28 election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly
scheduled alternative workweek proposed by an employer for adoption by employees may be a single

work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. Notwithstanding subdivision (c) of § 500, the menu of work schedule options may include a regular schedule of eight-hour days that are compensated in accordance with subdivision (a) of § 510. Employees who adopt a menu of work schedule options may, with employer consent, move from one schedule option to another on a weekly basis.

199. According to a letter received by the Division of Labor Standards Enforcement (DLSE) on September 9, 2020 that was signed by Devin Romanio, CLAREMONT's Senior Human Resources Business Partner, "Pursuant to Labor Code section 511 and the pertinent IWC Wage Order, this letter provides notice [to the DLSE] of the results of [CLAREMONT's] alternative workweek election, which provides for a weekly four day, ten hours per day schedule applicable to affected employees in the Campus Safety Department working at The Claremont Colleges, Inc., a company providing a range of shared services for the Claremont Colleges, located at 101 South Mills Avenue, Claremont, CA 91711-5053. A secret ballot election was held on August 14, 2020, for the purpose of deciding whether employees would 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."

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

201. Although MR. BUTLER ceased working for CLAREMONT prior to the date it adopted Its alternative 4/10 workweek¹, given his own experience in working overtime of ten (10) to fifteen (15) minutes every shift/workday to don and doff his required uniform, protective gear and other equipment

¹ Although MR. BUTLER started as and remained an hourly-paid employee throughout his employment with CLAREMONT and thus CLAREMONT 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 but not compensated for such, on information and belief, MR. BUTLER believes other Aggrieved
2 Employees and the Non-Exempt Employees Wages Class subject to CLAREMONT's alternative
3 workweek schedule continued to work off-the-clock to don and doff their uniforms, protective gear and
4 other equipment.

5 202. Consequently, DEFENDANTS violated Labor Code § 511 and are liable for unpaid
6 overtime pay to Non-Exempt Employees Wages Class members subject to CLAREMONT's alternative
7 workweek schedule.

8 203. To maintain this action under PAGA, MR. BUTLER does/did not have to be employed
9 by CLAREMONT and governed by its alternative workweek schedule. PAGA "allows an "aggrieved
10 employee"—a person affected by at least one Labor Code violation committed by an employer—to
11 pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas*
Security Services USA, Inc. (2018) H042852.

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

19 **NINETEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

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

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

22 205. MR. BUTLER incorporates paragraphs 1 through 205 of this complaint as if fully alleged
23 herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Premium Pay
24 Class against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds liable any employer or
25 other person—who is an owner, director, officer, or managing agent of the employer—acting on behalf
26 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
27 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be
28 violated, Sections...226.7..., may be held liable as the employer for such violation.

206. Under Labor Code § 512(a), "An employer may not employ an employee for a work

1 period of more than five hours per day without providing the employee with a meal period of not less
2 than 30 minutes, except that if the total work period per day of the employee is no more than six hours,
3 the meal period may be waived by mutual consent of both the employer and employee. An employer
4 may not employ an employee for a work period of more than 10 hours per day without providing the
5 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
6 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and
7 the employee only if the first meal period was not waived.”

8 207. As noted above, CLAREMONT operates 24 hour per day, 7 days per week and scheduled
9 MR. BUTLER, other Aggrieved Employees, and the Premium Pay Class to worked various full-time
10 and part-time shifts. Though MR. BUTLER, other Aggrieved Employees, and the Premium Pay Class
11 clocked out for a 30-minute meal period, CLAREMONT did not allow MR. BUTLER, Aggrieved
Employees, and the Premium Pay Class to turn off their radios.

12 208. This particular PAGA penalty and premium pay, or rather the reason for such invokes
13 the holding in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, in which California’s
14 Supreme Court confirmed Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-
15 call rest periods. The same is true of meal periods. “[E]mployers must relieve their employees of all
16 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.

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

20 210. CLAREMONT expected MR. BUTLER, Aggrieved Employees, and the Premium Pay
21 Class who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep
22 their radios powered on with audible volume but also respond to radio notices regardless of whether they
23 were on meal period.

24 211. Furthermore, MR. BUTLER and other Aggrieved Employees were expected to begin
25 working promptly, which meant being dressed in uniform and protective gear and other equipment, and
26 ready for briefing the moment their scheduled shift began. However, DEFENDANTS did not
27 compensate MR. BUTLER and other Aggrieved Employees for donning and doffing their uniforms.
28 Additionally, CLAREMONT’s policy, procedure, and/or practice of utilizing an uneven rounding
system that resulted in, over a period of time, CLAREMONT’s failure to compensate MR. BUTLER

1 and other Aggrieved Employees properly for all the time they actually worked, including overtime.
2 These policies, procedures, and practices also mean MR. BUTLER, other Aggrieved Employees, and the
3 Premium Pay Class did not receive from CLAREMONT a legitimate opportunity to take a meal period
4 by the 5th hour worked.

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

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

17 214. DEFENDANTS are also liable to MR. BUTLER and other Aggrieved Employees for
18 attendant PAGA penalties pursuant to Lab Code § 2699.3(a) and § 2699.5 for violating Labor Code §
19 512 and § 226.7(c) in the applicable amount(s) prescribed by Labor Code § 558(a) (*infra*).

20 **TWENTIETH CAUSE OF ACTION AGAINST DEFENDANTS**

21 **IWC ORDER 4-2001 § 12(A) Violation & IWC ORDER 4-2001 § 12(B) And § 226.7(c) Pay** 22 **(By MR. BUTLER, the Premium Pay Class, and Aggrieved PAGA Employees)**

23 215. MR. BUTLER incorporates paragraphs 1 through 214 of this complaint as if fully alleged
24 herein, and pleads the following on behalf of himself, other Aggrieved Employees, and the Premium Pay
25 Class against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds liable any employer or
26 other person—who is an owner, director, officer, or managing agent of the employer—acting on behalf
27 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
28 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be
violated, Sections...226.7..., may be held liable as the employer for such violation.

216. Under Labor Code § 1198, "The maximum hours of work and the standard conditions

1 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
2 labor for employees. The employment of any employee for longer hours than those fixed by the order or
3 under conditions of labor prohibited by the order is unlawful.

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

12 218. CLAREMONT operates 24 hour per day, 7 days per week and scheduled MR. BUTLER,
13 other Aggrieved Employees, and the Premium Pay Class to worked various full-time and part-time
14 shifts. CLAREMONT did not allow MR. BUTLER, Aggrieved Employees, and the Premium Pay Class
15 to turn off their radios during rest breaks, meaning they were on-duty and on-call rest breaks.

16 219. Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest
17 periods. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. “During required rest periods,
18 employers must relieve their employees of all duties and relinquish any control over how employees
19 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.

20 220. Similar to *ABM Security Services*, CLAREMONT failed to provide MR. BUTLER, other
21 Aggrieved Employees, and the Premium Pay Class with legitimate opportunities to take uninterrupted
22 rest breaks each workday because rest breaks were interrupted by the requirement to monitor radios.

23 221. CLAREMONT expected MR. BUTLER, Aggrieved Employees, and the Premium Pay
24 Class who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep
25 their radios powered on with audible volume but also respond to radio notices regardless of whether they
were on rest break.

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

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

9 224. DEFENDANTS are also liable to MR. BUTLER and other Aggrieved Employees for
10 attendant PAGA penalties pursuant to Lab Code § 2699.3 and § 2699.5 for violating IWC ORDER
11 4-2001 § 12(A) in the applicable amount(s) prescribed by Labor Code § 558(a) (*infra*).

12 **TWENTY-FIRST CAUSE OF ACTION AGAINST ONLY CLAREMONT**

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

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

15 225. MR. BUTLER incorporates paragraphs 1 through 224 of this complaint as if fully alleged
16 herein and pleads the following against ONLY CLAREMONT.

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

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

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

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

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

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

15 232. Therefore, in violating § 1174(d), CLAREMONT is liable to MR. BUTLER and other
16 Aggrieved Employees for attendant PAGA civil penalties pursuant to Labor Code § 2699.3(a) and §
2699.5 in the amount enumerated in Labor Code § 1174.5.

17 233. Labor Code § 1174.5 states, "Any person employing labor who willfully fails to
18 maintain the records required by subdivision (c) of Section 1174 or accurate and complete records
19 required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of
20 the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil
21 penalty of five hundred dollars (\$500).

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

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

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

25 234. MR. BUTLER incorporates paragraphs 1 through 233 of this complaint as if fully alleged
26 herein and pleads the following against DEFENDANTS.

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

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

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

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

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

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

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

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

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

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

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

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

27 240. Labor Code § 2699.3(f) states, “For all provisions of this code except those for which a
28 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 **TWENTY-THIRD 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)**

6 241. MR. BUTLER incorporates paragraphs 1 through 240 of this complaint as if fully alleged
7 herein and pleads the following against DEFENDANTS.

8 242. 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.

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

21 244. 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.

23 245. 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 CLAREMONT required uniforms, protective gear, and other equipment on
28 CLAREMONT premises off-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 CLAREMONT’s rounding policy.

246. 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.”

4 247. 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*).

7 248. 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.”

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

16 250. 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-FOURTH 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)**

21 251. MR. BUTLER incorporates paragraphs 1 through 250 of this complaint as if fully alleged
22 herein and pleads the following against Defendants.

23 252. 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.”

25 253. 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

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

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

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

22 256. As a result, MR. BUTLER and other Aggrieved Employees seek the civil penalty under
23 § 1197.1 as the attendant PAGA penalties pursuant to Labor Code § 2699.3(a) and § 2699.5.

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

29 258. According to page 5 of CLAREMONT’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**”.

CLAREMONT's own policy that requires the Non-Exempt Employees Wages Class to don and doff their uniforms and equipment off-the-clock demonstrates CLAREMONT intentionally did not pay applicable Campus Safety Personnel for such off-the-clock work.

TWENTY-FIFTH CAUSE OF ACTION AGAINST DEFENDANTS

**Labor Code § 1197.5(a) Equal Pay Violation And Labor Code § 1197.5(b) Fair Pay Violation
& Labor Code § 210 Statutory Penalty OR PAGA Civil Penalty
(By the Non-Exempt Employees Wages Class and/or Aggrieved PAGA Employees)**

259. MR. BUTLER incorporates paragraphs 1 through 258 of this operative complaint as if fully alleged herein and pleads the following against DEFENDANTS.

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

(2) Each factor relied upon is applied reasonably.

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

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

261. 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.

262. To prevail on his EPA claim, MR. BUTLER has the burden to prove that CLAREMONT 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

263. According to CLAREMONT’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.”

264. 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, CLAREMONT 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. CLAREMONT 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.

265. 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 CLAREMONT 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 CLAREMONT 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.”

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

Campus Safety Corporals

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

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

269. 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 CLAREMONT Campus Safety Corporal, which are as follows according to CLAREMONT's job description for the Corporal role: The position incumbent is designated as a Campus Security Authority, whose primary responsibility is to report allegations made in good faith to the reporting structure; supervise patrol officers, including effective field supervision of officers conducting patrols, to ensure the protection of and service to students, faculty and staff; supervise Campus Safety operation and personnel by assigning patrol areas, relay and explain written/oral directives, provide advice and assistance on patrol, etc.; provide in-service training to Campus Safety personnel; review reports and daily logs generated during the shift for completeness and accuracy; conduct quality control field inspections of staff; conduct shift briefings and effectively communicate relevant information to staff; evaluate the performance of staff and provide guidance, as needed; participate as appropriate in specialized and/or complex patrol or investigative assignments by directing activities of assigned Campus Safety staff, including interviewing of witnesses, apprehending and arresting suspects, and preparing and submitting written reports; in the absence of a Sergeant, performs as a watch commander

1 and shift supervisor; in the absence of the VP of Campus Safety, assume duties of an emergency
2 preparedness representative in the event of an emergency, in accordance with the Emergency
3 Preparedness Plan; supervise and coordinate department's inventory control and equipment issuance
4 efforts; and perform other duties as assigned.

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

7 **Campus Safety Sergeants**

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

13 **Campus Safety Dispatch**

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

18 273. Having established a prima facie case under California's Equal Pay Act and Fair Pay Act,
19 the burden of proof shifts to CLAREMONT to demonstrate that the unequal pay is justifiable under
20 Labor Code § 1197.5(a)(1)-(4).

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

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

27 276. A civil action to recover wages under subdivision (a) or (b) may be commenced no later
28

1 than two years after the cause of action occurs, except that a cause of action arising out of a willful
2 violation may be commenced no later than three years after the cause of action occurs.

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

6 **Labor Code § 210 Statutory Penalty OR PAGA Civil Penalty**

7 278. Under Labor Code § 210(a), "In addition to, and entirely independent and apart from, any
8 other penalty provided in this article, every person who fails to pay the wages of each employee as
9 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to
10 a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
11 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.

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

15 280. Therefore, MR. BUTLER on behalf of himself and the Non-Exempt Employees Wages
16 Class OR other Aggrieved Employees elects to pursue this penalty as either a statutory penalty or a civil
17 penalty under PAGA, but not both, which ever yields a larger recovery to affected employees.

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

19 **Labor Code § 1198 Violation**

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

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

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

27 283. As previously discussed, DEFENDANTS willfully failed to pay MR. BUTLER, other
28 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

1 campus safety uniforms and protective gear such as a ballistics vest; (b) being on-call during rest and
2 meal breaks because Aggrieved Employees did not have a legitimate opportunity to take such
3 uninterrupted, especially Class members and Aggrieved Employees who were/are Campus Safety
4 Officers, Corporals, and/or Sergeants expected to not only keep their radios powered on with audible
5 volume but also respond to radio notices regardless of whether they were on a rest or meal break; and (c)
6 due to CLAREMONT's policy, procedure, and/or practice of utilizing an uneven rounding system that
7 resulted in, over a period of time, DEFENDANTS' failure to compensate MR. BUTLER, other
8 Aggrieved Employees, and the Non-Exempt Employees Wages Class properly for all the time they
actually worked.

9 284. Therefore, DEFENDANTS violated Labor Code § 1198 and are liable for attendant
10 PAGA penalties pursuant to Labor Code § 2699.3(a) and § 2699.5.

11 **TWENTY-SEVENTH CAUSE OF ACTION AGAINST CLAREMONT**

12 **Lab. Code § 1198.5 Violation**

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

14 285. MR. BUTLER incorporates paragraphs 1 through 284 of this complaint as if fully alleged
15 herein, and pleads the following on behalf of himself and Aggrieved Employees against
16 DEFENDANTS.

17 286. According to Labor Code § 1198.5(a), "Every current and former employee, or his or her
18 representative, has the right to inspect and receive a copy of the personnel records that the employer
maintains relating to the employee's performance or to any grievance concerning the employee."

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

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

27 289. Pre-litigation, on Monday, July 29, 2019 at 11:00 am, MR. BUTLER emailed Mr.
28

1 Romanio, writing “Sir, Thank you, I received the check this morning; however, I did notice a
2 discrepancy. Attached is a screen shot of my worked hours via Kronos and a screen shot of my pay slip.
3 My worked hours are 74.15 hours. My pay slip states 72.07 regular hours and 1.33 overtime hours for a
4 total of 73.4 hours. Time discrepancy - $74.15 - 73.4 = 0.75$ overtime hours. May the pay discrepancy be
5 corrected please? In addition, may I have a copy of my employee file TCCS has on my employment to
6 include all annual performance evaluations? Thank you in advance.”

7 290. Not only did CLAREMONT, through Mr. Romanio, fail to comply with this request
8 within 30 calendar days, CLAREMONT through Mr. Romanio, completely ignored MR. BUTLER’s
9 request for “a copy of [his] employee file CLAREMONT’S has on [his] employment *to include all*
10 *annual performance evaluations* [emphasis added]”, utterly disregarding MR. BUTLER’S right under §
11 1198.5(a). Thus, CLAREMONT violated/s Labor Code § 1198.5(a) and § 11985(b)(1).

12 291. Given his own experience of being ignored by CLAREMONT in trying to request
13 records under Labor Code sections 226(b) (supra) and § 1198.5, MR. BUTLER believes CLAREMONT
14 may also have violated the §§ 1198.5 rights of other Aggrieved Employees.

15 292. Even if other Aggrieved Employees have not requested employee records under §
16 1198.5, CLAREMONT is nevertheless liable to MR. BUTLER for the statutory penalty pursuant to
17 Labor Code § 1198.5(k).

18 293. Per Labor Code § 1198.5(l), “A current or former employee may also bring an action for
19 injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney’s
20 fees in such an action.” Therefore, MR. BUTLER seeks injunctive relief ordering CLAREMONT to
21 afford MR. BUTLER, other former employees, and current employees the right under Labor Code §
22 1198.5 to inspect or receive a copy of the personnel records that the employer maintains relating to the
23 employee’s performance or to any grievance concerning the employee.

24 294. CLAREMONT is also liable to MR. BUTLER and/or other Aggrieved Employees for
25 PAGA civil penalties under § 2699.3(c) due to its violation of § 1198.5.

26 **TWENTY-EIGHTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

27 **Lab. Code § 2802(a) Violation**

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

29 295. MR. BUTLER incorporates paragraphs 1 through 294 of this complaint as if fully
30 alleged herein, and pleads the following on behalf of himself, the Reimbursement-Owed Class, and
31 Aggrieved Employees against ONLY CLAREMONT.

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

9 297. An employer generally satisfies this obligation by either reimbursing a given expense or
10 providing the employee with the equipment necessary to ensure he or she does not incur the expense in
11 the first place.

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

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

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

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

302. Furthermore, according to CLAREMONT’s Campus Safety Training Manual on

1 Grooming – Uniform – Equipment, CLAREMONT required MR. BUTLER, other Aggrieved
2 Employees, and the Reimbursement-Owed Class, as part of their work uniform, “to wear plain black all-
3 leather uniform shoes/combat boots or a combination leather/canvas military boot. Personnel shall keep
4 their shoes neatly polished while on duty.” MR. BUTLER, Aggrieved Employees, and the
5 Reimbursement-Owed Class had to pay for these special shoes/boots and shoe polish for which
6 CLAREMONT failed to reimburse them. As noted above, CLAREMONT expected MR. BUTLER,
7 Aggrieved Employees, and the Reimbursement-Owed Class to polish these shoes/boots on their own
8 time, i.e. off-the-clock. MR. BUTLER, for example, performed a brush polish every day at a maximum
9 to every other day at a minimum taking 10-20 seconds per occurrence, and performed a shine polish
10 approximately once per week taking approximately 5 minutes. CLAREMONT Watch Commanders
11 occasionally performed uniform inspections where those whose uniforms were not up to CLAREMONT
standards would be verbally reprimanded, and could even be sent home.

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

21 304. CLAREMONT did/does not pay enhanced compensation to MR. BUTLER, other
22 Aggrieved Employees, and/or the Reimbursement-Owed Class to satisfy CLAREMONT’s California
23 Labor Code section 2802 reimbursement obligations.

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

27 306. Thus, CLAREMONT violated Labor Code § 2802(a) and owes reimbursement to MR.
28

1 BUTLER and the Reimbursement-Owed Class for these necessary expenditures or losses incurred by
2 them in direct consequence of the discharge of their duties, or of their obedience to CLAREMONT's
3 directions. Under § 2802(b), CLAREMONT also owes MR. BUTLER and the Reimbursement-Owed
4 Class "interest at the same rate as judgments in civil action. Interest shall accrue from the date on which
5 the employee incurred the necessary expenditure or loss." Per § 2802(c), this includes all reasonable
6 costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted
7 by this section.

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

10 **TWENTY-NINTH CAUSE OF ACTION AGAINST DEFENDANTS**

11 **Reporting Time Pay**

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

13 308. MR. BUTLER incorporates paragraphs 1 through 307 of this complaint as if fully
14 alleged herein, and pleads the following against DEFENDANTS.

15 309. Under IWC Order 4-2001, Section 5, "(A) Each workday an employee is required to
16 report for work and does report, but is not put to work or is furnished less than half said employee's
17 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work,
18 but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of
19 pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a
20 second time in any one workday and is furnished less than two (2) hours of work on the second
21 reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which
22 shall not be less than the minimum wage.

23 310. As a former Corporal, MR. BUTLER is aware CLAREMONT, in firing its employees,
24 would have soon-to-be terminated employees come into work on their last day but fail to furnish such
25 employees with at least half their regular working hours before firing them. Though MR. BUTLER
26 resigned, he is still owed reporting time pay for the times CLAREMONT scheduled MR. BUTLER for a
27 shift, usually due to an evening event such as a campus party, but failed furnish at least half the working
28 hours to MR. BUTLER and/or pay him reporting time pay. MR. BUTLER knows CLAREMONT did
this to other Non-Exempt Employees Wages Class members and Aggrieved Employees, typically to
part-time workers, which MR. BUTLER once was. Therefore, on behalf of the Non-Exempt Employees

1 Wages Class members, MR. BUTLER seeks to recover reporting time pay CLAREMONT owes and
2 civil penalties under PAGA.

3 **THIRTIETH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

4 **I.W.C. Order 4-2001 § 20(A)**

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

6 311. MR. BUTLER incorporates paragraphs 1 through 310 of this complaint as if fully
7 alleged herein and pleads the following against CLAREMONT.

8 312. Under I.W.C. Order 4-2001 § 20(A), “In addition to any other civil penalties provided by
9 law, any employer or any other person acting on behalf of the employer who violates, or causes to be
10 violated, the provisions of this order, shall be subject to the civil penalty of: (1) Initial Violation —
11 \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in
12 addition to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations —
13 \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in
14 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
15 receive payment of all wages recovered.

16 313. Due to CLAREMONT’s underpayment of wages to MR. BUTLER, Aggrieved
17 Employees, and Non-Exempt Employees Wages Class, MR. BUTLER—on behalf of himself, the Non-
18 Exempt Employees Wages Class, and other Aggrieved Employees—seeks additional penalties pursuant
19 to I.W.C. Order 4-2001 § 20(A).

20 **THIRTY-FIRST CAUSE OF ACTION AGAINST DEFENDANTS**

21 **Restitution And Injunctive Relief For Unfair Competition**

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

23 314. MR. BUTLER incorporates paragraphs 1 through 313 of this complaint as if fully
24 alleged herein and pleads the following against CLAREMONT.

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

316. A business practice violated the “unlawful, unfair or fraudulent” prong if the practice is
prohibited by statutory or common law, including if the practice is against public policy. Almost any
violation of the law can serve as the basis for an unfair competition claim if, as a result of the unfair

1 competition consumer(s) are harmed or the business practice provides an unfair advantage to the business
2 over its competitors.

3 317. In this case, CLAREMONT violated the above numerated Labor Code sections through
4 business practices providing an unfair advantage to CLAREMONT over its competitors, especially other
5 nonprofit corporations who must comply with state and federal law to maintain tax exempt status under
6 Internal Revenue Code § 501(c).

7 318. Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be
8 granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition. B & P Code §
9 17202.

10 319. Any person who engages, has engaged, or proposes to engage in unfair competition may
11 be enjoined in any court of competent jurisdiction. The court may make such orders or judgments as
12 may be necessary to prevent the use or employment by any person of any practice which constitutes
13 unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest
14 any money or property, real or personal, which may have been acquired by means of such unfair
15 competition. Any person may pursue representative claims or relief on behalf of others only if the
16 claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code
17 of Civil Procedure. B & P Code § 17203.

18 320. In compliance with B & P Code § 17203, MR. BUTLER is a person who has suffered
19 injury in fact and has lost money or property as a result of CLAREMONT's unfair competition by
20 enforcing the same unlawful employment policies at least over a four year period prior to initiated this
21 actions and possibly up to the disposition date of this action as detailed throughout this Complaint.

22 321. Therefore, on behalf of himself and all others similarly situated, i.e. the Restitution
23 Class, MR. BUTLER seeks restitution against CLAREMONT for its violation of California's Unfair
24 Competition Laws.

25 322. Furthermore, because MR. Butler meets the standing requirements of B & P § 17204 and
26 has complied with CCP § 382 in as required by B & P Code § 17203, on behalf of himself and all
27 CLASS members, MR. BUTLER seeks to injunctive relief against CLAREMONT and any other
28 applicable DOE defendant(s) who engages, has engaged, or proposes to engage in unfair competition to
prevent them from use of or employment by any person of any practice which constitutes unfair
competition, or as may be necessary to restore to any person in interest any money or property, real or

personal, which may have been acquired by means of such CLAREMONT's and any other applicable DOE defendant(s)' unfair competition.

JURY TRIAL DEMAND

1. MR. BUTLER, on behalf of himself and the CLASS, demands a jury trial on all issues so triable.

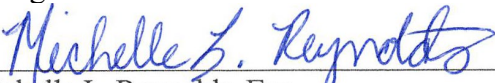
PRAYER

WHEREFORE MR. BUTLER prays for the following:

1. Judgment in his, the Class and Aggrieved Employee's favor against DEFENDANTS for any and all causes of actions enumerated above for which each defendant is personally liable;
2. Compensatory damages according to proof for a minimum of \$10 million;
3. Civil penalties under California's Private Attorney General Act of 2004 (PAGA);
4. Injunctive relief and restitution pursuant to California's UCL, enjoining DEFENDANTS from violating California's Labor Code;
5. An award of attorneys' fees incurred in the investigation, filing and prosecution of this action pursuant to CCP § 1021.5; Lab. Code §§ 218.5¹, 226(e)(1), 226(h), 1194², 1198.5(l), 2699(g), 2802(c), and any other applicable provision of law awarding attorneys' fees;
6. Costs of suit incurred per C.C.P. §§ 1032(b), 1033.5, 1034 and applicable Lab. Code sections;
7. Interest pursuant to Labor Code §§ 1194(a), 1194.2, and § 218.6³ and any other applicable provision of law awarding interest; and
8. For such other and further relief as this Court may deem just and proper.

Dated: June 30, 2021

THE Legal Advocate

By: 
Michelle L. Reynolds, Esq.

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

¹ Labor Code § 218.5 states in relevant part, "(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. ... (b) This section does not apply to any cause of action for which attorney's fees are recoverable under Section 1194."

² Labor Code § 1194 states in relevant part, "(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

³ 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.

PROOF OF SERVICE
STATE OF CALIFORNIA

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

On June 30, 2021, I served the following document(s) on the interested party/parties in this action as follows:

(1) FOURTH AMENDED COMPLAINT

Constangy, Brooks, Smith & Prophete, LLP
Attn: Richard E. Bromley
2029 Century Park East, Suite 1100
Los Angeles, CA 90067
E-mail: TImara@constangy.com
and/or
E-mail: RBromley@constangy.com

Attorney(s) for Defendant(s) The Claremont Colleges, Inc.

☒ ONLY BY ELECTRONIC MAIL/SERVICE under CCP § 1010.6 and CRC, Rule 2.251 in accordance with CRC, Rule 3.1362, I caused a true copy of said document(s) to be sent in electronic (PDF or DOCX) format only by e-mailing the document(s) to the persons at the e-mail address(es) listed above, which I declare is the email address for the attorney(s) of record for the 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.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct. Executed June 30, 2021, in the city of Sacramento, California.

By: Michelle L. Reynolds
Michelle L. Reynolds, Esq.