

FILED
Superior Court of California
County of Los Angeles

SEP 14 2020

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By S. DREW Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHAWN BUTLER, individually and on
behalf of other persons similarly
situated,

Case No. **20STCV34934**

CLASS ACTION

Plaintiff,

COMPLAINT

vs.

THE CLAREMONT COLLEGES, INC. fka
CLAREMONT UNIVERSITY
CONSORTIUM; and DOES 1 through 10.

Defendant.

- 1. Failure to Pay Minimum Wages
- 2. Failure to Pay Overtime Wages
- 3. Unfair Competition
- 4. Failure to Provide Accurate Wage Statements
- 5. Failure to Pay All Wages Owed Upon Termination
- 6. Civil Penalties Under PAGA

DEMAND FOR JURY TRIAL

Plaintiff Shawn Butler ("Plaintiff"), on behalf of himself and all others similarly
situated, complains and alleges as follows:

INTRODUCTION

1. This class action and representative action lawsuit arises out of the failure of defendant
The Claremont Colleges, Inc. formerly known as Claremont University Consortium ("Defendant") to
pay non-exempt employees all the wages owed to them. Defendant fails to pay non-exempt employees

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1 all the minimum wages and overtime wages owed to them because Defendant engages in uneven
2 rounding practices. Because Defendant does not pay non-exempt employees all the minimum wages
3 and overtime wages owed to them, Defendant engages in unfair competition, Defendant fails to
4 provide them with accurate wage statements, and Defendant fails to pay terminated non-exempt
5 employees all the wages owed to them upon termination. With respect to all of its violations of the
6 Labor Code, Defendant is also liable for civil penalties under the Private Attorney's General Act
7 ("PAGA"), Labor Code Section 2698 et seq.

8 2. With respect to his class action claims, Plaintiff is a member of and seeks to be the class
9 representative for the Non-Exempt Employees Class, the Restitution Class, the Wage Statement Class,
10 and the Terminated Employees Class (collectively the "Class") defined in paragraph 11 below. With
11 respect to his claims under PAGA, Plaintiff, acting as a proxy for the State of California, seeks relief
12 on behalf of similarly situated employees aggrieved by Defendant's unlawful practices ("Aggrieved
13 Employees").

14 3. Plaintiff seeks to recover unpaid wages, liquidated damages, restitution, civil penalties
15 and statutory penalties to which Plaintiff and other class members are entitled under the Labor Code
16 and/or Business & Professions Code Section 17203.

17 **JURISDICTION AND VENUE**

18 4. Venue is proper in this Judicial district and the County of Los Angeles because work
19 was performed by class members in the County of Los Angeles and Defendant's legal obligations to
20 class members under California law arose and were breached in the County of Los Angeles.

21 5. The California Superior Court has jurisdiction in this matter because Plaintiff is a
22 resident of California, Defendant is qualified to do business in California, and Defendant regularly
23 conducts business in California. Further, there is no federal question at issue as the claims herein are
24 based solely on California law.

25 **THE PARTIES**

26 **Plaintiff**

27 6. Plaintiff worked as a non-exempt employee for Defendant, date currently unknown
28 but will be amended. During his employment with Defendant, Plaintiff was not paid all the

1 minimum wages and overtime wages owed to Plaintiff because Defendant engaged in uneven rounding
2 practices that resulted in Plaintiff not getting paid for all hours worked As a result of the foregoing
3 violations of the Labor Code, Plaintiff was not provided accurate wage statements as required by Labor
4 Code Section 226 and Plaintiff was not paid all the wages owed to him upon termination as required by
5 Labor Code Section 201 or 202. Defendant has also not paid Plaintiff any of the waiting time penalties
6 owed to Plaintiff under Labor Code Section 203 for its willful failure to pay Plaintiff all the wages
7 owed to him upon termination.

8 7. The members of the Class and Aggrieved Employees are identifiable, similarly situated
9 persons who presently work or formerly worked as non-exempt employees for Defendant.

10 **Defendant**

11 8. Defendant is a corporation organized under the laws of the State of California that, prior
12 to December 12, 2017, operated under the name Claremont University Consortium. Defendant
13 maintains its principal place of business in Claremont, California. Defendant provides educational
14 services at various locations throughout the state of California. At all times relevant to this action,
15 Defendant was the employer of Plaintiff and the other Aggrieved Employees.

16 9. Plaintiff is ignorant of the true names, capacity, relationship and extent of participation
17 in the conduct herein alleged of the Defendants sued herein as DOES 1 through 10, but is informed and
18 believes and thereon alleges that said defendants are legally responsible for the wrongful conduct
19 alleged herein and therefore sue these defendants by such fictitious names. Plaintiff will amend this
20 complaint to allege their true names and capacities when ascertained.

21 10. Plaintiff is informed and believes and thereon alleges that each defendant acted in all
22 respects pertinent to this action as the agent of the other defendants and/or carried out a joint scheme,
23 business plan or policy in all respects pertinent hereto, and/or the acts of each defendant are legally
24 attributable to the other defendants.

25 **CLASS ACTION ALLEGATIONS**

26 11. Plaintiff brings his class action claims on behalf of herself and on behalf of all other
27 similarly situated persons as a class action pursuant to Code of Civil Procedure Section 382. The
28 members of the Class belong to the Non-Exempt Employees, Restitution Class, Wage Statement Class

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1 and Terminated Employees Class, defined as follows:

2 **Non-Exempt Employees Class:** All persons who, at any time since the date three years before
3 the filing of the complaint, worked for Defendant as a non-exempt employee in California.

4 **Restitution Class:** All persons who, at any time since the date four years before the filing of
5 the complaint, worked for Defendant as a non-exempt employee in California.

6 **Wage Statement Class:** All persons who, at any time since the date one year before the filing
7 of the complaint, worked for Defendant as a non-exempt employee in California.

8 **Terminated Employees Class:** All persons who worked for Defendant as a non-exempt
9 employee in California, whose employment with Defendant ended at any time since the date
three years before the filing of the complaint.

10 12. This action has been brought and may be maintained as a class action pursuant to Code
11 of Civil Procedure Section 382 because there is a well defined community of interests among many
12 persons who comprise a readily ascertainable class:

13 a. The Class members are so numerous that the individual joinder of all of them as named
14 plaintiffs is impracticable. While the exact number of Class members is unknown to Plaintiff at this
15 time, Plaintiff is informed and believes and thereon alleges that there are not less than 50 members in
16 the Non-Exempt Employees Class, not less than 50 members in the Restitution Class, not less than 50
17 members in the Wage Statement Class, not less than 50 members in the Terminated Employees Class,
18 and not less than 50 members in the Class.

19 b. Common questions of law and fact exist as to members of the Class and predominate
20 over any questions that affect only individual members of the Class. These common questions include,
21 but are not limited to:

22 (1) Did Defendant utilize an uneven rounding system that, over time, resulted in the
23 failure to pay class members all wages owed for all hours worked?

24 c. Plaintiff is a member of the Non-Exempt Employees Class, Restitution Class, Wage
25 Statement Class, and the Terminated Employees Class, and the claims of Plaintiff are typical of the
26 claims of the other class members who Plaintiff seeks to represent. Plaintiff was formerly employed
27 by Defendant and was subjected to the same unlawful practices as other employees of Defendant.
28 Plaintiff and other members of the Class suffered the same injuries and seek the same relief.

1 d. Plaintiff will adequately and fairly protect the interests of the members of the Class.
2 Plaintiff has no interest adverse to the interests of absent class members and Plaintiff is represented by
3 attorneys with substantial class action experience in civil litigation and employment law.

4 e. A class action is superior to other available means (if any) for fair and efficient
5 adjudication of the claims of the Class and would be beneficial for the parties and the court. Class
6 action treatment will allow a large number of similarly situated persons to prosecute their common
7 claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort
8 and expense that numerous individual actions would require. The monetary amounts due to many
9 individual Class members are likely to be relatively small, and the burden and expense of litigation
10 would make it difficult or impossible for Class members to seek and obtain relief through individual
11 lawsuits. A class action will serve an important public interest by providing Class members an
12 effective mechanism for redress of violation of their statutory rights.

13 13. Plaintiff is presently unaware of any difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action, but reserves the right
15 to modify her allegations and/or the class definitions based on further investigation, discovery or legal
16 developments.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

19 **(By Plaintiff and the Non-Exempt Employees Class against Defendants)**

20 14. Plaintiff incorporates paragraphs 1 through 13 of this complaint as if fully alleged
21 herein.

22 15. At all relevant times, Plaintiff and the other members of the Non-Exempt Employees
23 Class were employees of Defendant covered by Labor Code Section 1197.

24 16. Pursuant to Labor Code Section 1197, Plaintiff and the other members of the Non-
25 Exempt Employees Class were entitled to minimum wages for all the time spent in activities that
26 constituted compensable hours worked.

27 17. Defendant failed to pay Plaintiff and other members of the Non-Exempt Employees
28 Class all the minimum wages owed to them for all the time they spent in activities that constituted

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1 compensable hours worked in accordance with Labor Code Section 1197. Plaintiff is informed and
2 believes and thereon alleges that, during the limitations period applicable to this cause of action,
3 Defendant had a policy or practice of utilizing an uneven rounding system that resulted in Defendant
4 paying non-exempt employees wages for fewer hours than they actually worked.

5 18. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Non-
6 Exempt Employees Class have suffered damages in an amount, subject to proof, to the extent they
7 were not paid all the minimum wages owed to them.

8 19. Pursuant to Labor Code Section 1194, Plaintiff and other members of the Non-Exempt
9 Employees Class are entitled to recover the full amount of their unpaid minimum wages, interest
10 thereon, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 1194.2, Plaintiff
11 and other members of the Non-Exempt Employees Class are entitled to recover liquidated damages in
12 an amount equal to the amount of unpaid minimum wages and interest thereon.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME WAGES**

15 **(By Plaintiff and the Non-Exempt Employees Class against Defendants)**

16 20. Plaintiff incorporates paragraphs 1 through 19 of this complaint as if fully alleged
17 herein.

18 21. At all relevant times, Plaintiff and the other members of the Non-Exempt Employees
19 Class were employees of Defendant covered by Labor Code Section 510.

20 22. Pursuant to Labor Code Section 510, Plaintiff and the other members of the Non-
21 Exempt Employees Class were entitled to overtime wages at the rate of 1 and ½ times their regular rate
22 of pay for every hour they worked in excess of 8 hours on a workday or in excess of 40 hours in a
23 workweek.

24 23. Defendant failed to pay Plaintiff and other members of the Non-Exempt Employees
25 Class all the overtime wages owed to them for every hour of overtime they worked in accordance with
26 Labor Code Section 510. Plaintiff is informed and believes and thereon alleges that, during the
27 limitations period applicable to this cause of action, Defendant a policy or practice of utilizing an
28 uneven rounding system that resulted in Defendant paying non-exempt employees wages for fewer

1 hours than they actually worked.

2 24. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Non-
3 Exempt Employees Class have suffered damages in an amount; subject to proof, to the extent they
4 were not paid all the overtime wages owed to them.

5 25. Pursuant to Labor Code Section 1194, Plaintiff and other members of the Non-Exempt
6 Employees Class are entitled to recover the full amount of their unpaid overtime wages, interest
7 thereon, reasonable attorney's fees and costs of suit.

8 **THIRD CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(By Plaintiff and the Restitution Class against Defendants)**

11 26. Plaintiff incorporates paragraphs 1 through 25 of this complaint as if fully alleged
12 herein.

13 27. The unlawful conduct of Defendant alleged herein constitutes unfair competition within
14 the meaning of Business and Professions Code Section 17200.

15 28. As a result of Defendant's unfair competition as alleged herein, Plaintiff and other
16 members of the Restitution Class have suffered injury in fact and lost money or property. Plaintiff and
17 members of the Restitution Class have been deprived of their rights to receive payment of all the
18 minimum wages and overtime wages owed to them, and they have not been paid all the minimum
19 wages and overtime wages owed to them.

20 29. Pursuant to Business and Professions Code Section 17203, Plaintiff and other members
21 of the Restitution Class are entitled to restitution of all wages owed to them under the Labor Code, and
22 interest thereon, in which they had a property interest, which Defendant failed to pay to them but
23 withheld and retained for itself. Restitution of the money owed to Plaintiff and other members of the
24 Restitution Class that Defendant wrongfully withheld and retained by means of engaging in unlawful
25 business practices by failing to pay that money in violation of the Labor Code is necessary to prevent
26 Defendant from becoming unjustly enriched by their failure to comply with the Labor Code.

27 30. Plaintiff and members of the Restitution Class are entitled to recover reasonable
28 attorney's fees in connection with their unfair competition claims pursuant to Code of Civil Procedure

1 Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

4 **(By Plaintiff and the Wage Statement Class against Defendants)**

5 31. Plaintiff incorporates paragraphs 1 through 25 of this complaint as if fully alleged
6 herein.

7 32. At all relevant times, Plaintiff and the other members of the Wage Statement Class
8 were employees of Defendant covered by Labor Code Section 226.

9 33. Pursuant to Labor Code Section 226(a), Plaintiff and the other members of the
10 Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of
11 wages, an accurate itemized wage statement showing, *inter alia*, the total amount of gross wages
12 earned during the pay period, the total amount of net wages earned during the pay period, and the
13 total number of hours worked during the pay period.

14 34. Defendant failed to provide Plaintiff and other members of the Wage Statement Class
15 accurate itemized statements in accordance with Labor Code Section 226(a). Plaintiff is informed and
16 believes and thereon alleges that, during the limitations period applicable to this cause of action,
17 Defendant had a policy or practice of utilizing an uneven rounding system that resulted in class
18 members not receiving accurate wage statements.

19 35. Defendant's failure to provide Plaintiff and other members of the Wage Statement Class
20 with accurate wage statements was knowing and intentional. Defendant had the ability to provide Plaintiff
21 and other members of the Wage Statement Class with accurate wage statements but ,
22 intentionally provided wage statements that Defendant knew did not comply with all the requirements of
23 Labor Code Section 226. Defendant intended and knew that, during the limitations period applicable to this
24 cause of action, Defendant had a policy or practice of utilizing an uneven rounding system that resulted in
25 class members not receiving accurate wage statements.

26 36. As a result of Defendant's conduct, Plaintiff and other members of the Wage Statement
27 Class have suffered injury. From the wage statements provided to them alone, Plaintiff and other
28 members of the Wage Statement Class could not promptly and easily determine the total amount of

gross wages actually earned during the pay period, the total amount of net wages actually earned during the pay period, or the total number of hours actually worked during the pay period.

37. Pursuant to Labor Code Section 226(e), Plaintiff and other members of the Wage Statement Class are entitled to recover fifty dollars for the initial pay period in which a violation of Labor Code Section 226 occurred and one hundred dollars for each violation of Labor Code Section 226 in every subsequent pay period, not to exceed an aggregate civil penalty of four thousand dollars per employee.

38. Pursuant to Labor Code Sections 218, 226(e) and 226(g), Plaintiff and other members of the Wage Statement Class are entitled to recover the full amount of civil penalties due under Labor Code Section 226(e), reasonable attorney's fees and costs of suit.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES OWED UPON TERMINATION

(By Plaintiff and the Terminated Employees Class against Defendants)

39. Plaintiff incorporates paragraphs 1 through 25 of this complaint as if fully alleged herein.

40. At all relevant times, Plaintiff and the other members of the Terminated Employees Class were employees of Defendant covered by Labor Code Sections 201 or 202.

41. Pursuant to Labor Code Sections 201 or 202, Plaintiff and the other members of the Terminated Employees Class were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours' previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

42. Defendant failed to pay Plaintiff and other members of the Terminated Employees Class all wages earned and unpaid prior to termination in accordance with Labor Code Section 201 or 202. Plaintiff is informed and believes and thereon alleges that, during the limitations period applicable to this cause of action, Defendant had a policy or practice of utilizing an uneven rounding system that

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1 resulted in class members not being paid all the wages owed to them.

2 43. Defendant's failure to pay Plaintiff and other members of the Terminated Employees
3 Class all wages earned prior to termination in accordance with Labor Code Sections 201 or 202 was
4 willful. Defendant had the ability to pay all wages earned by members of the Terminated Employees
5 Class prior to termination but intentionally adopted policies or practices incompatible with the
6 requirements of Labor Code Sections 201 or 202. When Defendant failed to pay upon termination all
7 wages earned by members of the Terminated Employees Class prior to termination, Defendant knew
8 what it was doing and intended to do what it did.

9 44. Pursuant to Labor Code Section 203, Plaintiff and other members of the Terminated
10 Employees Class are entitled to penalty wages, from the day their earned and unpaid wages were due
11 upon termination until paid, up to a maximum of thirty days.

12 45. As a result of Defendant's conduct, Plaintiff and the other members of the Terminated
13 Employees Class have suffered damages, in an amount subject to proof, to the extent they were not
14 paid for all wages earned prior to termination in violation of Labor Code Section 201 or 202.

15 46. As a result of Defendant's conduct, Plaintiff and the other members of the Terminated
16 Employees Class have suffered damages, in an amount subject to proof, to the extent they were not
17 paid for all penalty wages owed to them under Labor Code Section 203.

18 47. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the
19 Terminated Employees Class are entitled to recover the full amount of their unpaid wages, unpaid
20 penalty wages, reasonable attorney's fees and costs of suit. Plaintiff and other members of the
21 Terminated Employees Class are entitled to recover pre-judgment interest on all due wages and penalty
22 wages under Labor Code Section 218.6 and/or Civil Code Section 3287(a).

23 **SIXTH CAUSE OF ACTION**

24 **CIVIL PENALTIES UNDER PAGA**

25 **(By Plaintiff and Aggrieved Employees against Defendants)**

26 48. Plaintiff incorporates paragraphs 1 through 10 and 14 through 47 of this complaint as if
27 fully alleged herein.

28 49. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of

1 himself and other current or former employees, to bring a civil action to recover civil penalties
2 pursuant to the procedures specified in Labor Code Section 2699.3.

3 50. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
4 Section 2699.3. By letter dated October 6, 2017, Plaintiff submitted notice electronically to the Labor
5 and Workforce Development Agency ("LWDA"), and gave written notice to Defendant by certified
6 mail, of the specific provisions of the Labor Code alleged to have been violated, including the facts
7 and theories to support the alleged violations. A true and correct copy of the October 6, 2017 notice
8 letter attached as Exhibit 1. Attached hereto as Exhibit 2 is a true and correct copy of the email from
9 the LWDA confirming receipt of the PAGA notice submitted by Plaintiff. To date, more than 65 days
10 after the postmark date of October 6, 2017, the LWDA has not advised Plaintiff that it intends to
11 investigate Plaintiffs allegations.

12 51. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved
13 Employees are entitled to recover civil penalties for Defendant's violations of the Labor Code in the
14 following amounts:

15 a. For violation of Labor Code Sections 201, 202, 203, 226(a), and 1197, one hundred
16 dollars (\$100) for each employee per pay period for the initial violation and two hundred dollars
17 (\$200) for each employee per pay period for each subsequent violation [penalty per Labor Code
18 Section 2699(f)(2)].

19 b. For violation of Labor Code Section 510, fifty dollars (\$50) for each employee for each
20 pay period and, for each subsequent violation, one hundred dollars (\$100) for each employee for each
21 pay period in addition to an amount sufficient to recover unpaid wages [penalty per Labor Code
22 Section 558].

23 52. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be
24 distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

25 53. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable
26 attorney's fees and costs in connection with her claims for civil penalties.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for

1 judgment against Defendants as follows:

2 A. With respect to Plaintiff's class action claims, an order certifying this case as a class
3 action.

4 B. With respect to Plaintiff's class action claims, an order appointing Plaintiff as
5 representative for the Class.

6 C. With respect to Plaintiff's class action claims, an order appointing Plaintiff's counsel as
7 counsel for the Class.

8 D. Damages for unpaid minimum wages under Labor Code Section 1194.

9 E. Liquidated damages under Labor Code Section 1194.2.

10 F. Damages for unpaid overtime wages under Labor Code Section 1194.

11 G. Restitution under Business and Professions Code Section 17203.

12 H. Civil penalties under Labor Code Section 226(e).

13 I. Damages for unpaid wages under Labor Code Section 201 and 202.

14 J. Statutory penalties under Labor Code Section 203

15 K. Civil penalties under Labor Code Section 2699.

16 L. Pre-judgment interest at the maximum legal rate.

17 M. Reasonable attorney's fees.

18 N. Costs of suit.

19 O. Such other relief as the Court may deem just and proper.

20
21 Dated: July 29, 2020

22 THE Legal Advocate

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

25 Attorney for Plaintiff Shawn Butler
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1 **DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury for himself and the class on all claims so triable.

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4 Dated: July 29, 2020

THE Legal Advocate

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

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8 Attorney for Plaintiff Shawn Butler
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