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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

NOELLE RAWLINS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

HORIZON EDUCATION HK LIMITED. Dba
SayABC, a Foreign Corporation, and DOES 1-
10, inclusive

Defendant.

CASE NO: 37-2021-00022215-CU-OE-CTL

**PLAINTIFF'S CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

**(1) PAGA PENALTIES FOR DEFENDANT'S
WILLFUL MISCLASSIFICATION IN
VIOLATION OF LABOR CODE SECTION
226.8 AND 2698, ET SEQ.;**
**(2) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 226.2, 1194);**
**(3) FAILURE TO PAY OVERTIME (LABOR
CODE § 510;**
**(4) FAILURE TO PROVIDE COMPLIANT
REST PERIODS AND PAY MISSED REST
BREAK PREMIUMS (LABOR CODE §§ 226.7;**
IWC WAGE ORDER NO. 4);
**(5) FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS AND PAY MISSED MEAL
BREAK PREMIUMS (LABOR CODE §§ 226.7,**
512; IWC WAGE ORDER NO. 4);
**(6) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE § 226);**
**(7) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);**
**(8) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);**
**(9) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE §2802);**
**(10) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204); AND**
**(11) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5);**
DEMAND FOR JURY TRIAL

1 Plaintiff Noelle Rawlins (“Plaintiff”), on behalf of herself, the State of California, other
2 aggrieved employees, the California General public, and all others similarly situated (hereinafter
3 “Class Members”), complains and alleges as follows:

4 OVERVIEW OF CLAIMS

5 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
6 class action, as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the
7 California general public and the LWDA, against Defendant Horizon Education Limited HK
8 (“Defendant”) for (1) its willful misclassification of Plaintiff and other Class Members and
9 Aggrieved Employees as independent contractors; (2) its failure to pay minimum wages; (3) its
10 failure to pay overtime wages; (4) its failure to provide compliant rest breaks and pay missed rest
11 break premiums to its current and former employees in California; (5) its failure to provide
12 compliant meal breaks and pay missed meal break premiums to its current and former employees
13 in California; (6) its failure to provide complete wage statements to its current and former
14 employees in California within the one year prior to the filing of this Complaint; (7) its failure to
15 pay all wages due to former employees based on the foregoing; (8) its failure to pay timely wages
16 to employees based on the foregoing; (9) its failure to reimburse business expenses; (10) unfair
17 business practices based on the foregoing; and (11) PAGA and other penalties based on the
18 foregoing. As a result of the foregoing, Defendant has violated California statutory laws as
19 described below.

20 2. “Class Members” refers to all individuals who performed services as teachers in
21 California through Defendant’s platform from July 24, 2019 onward. The “Class Period” is
22 designated as the period from July 24, 2016 through the present. The PAGA Period is from July
23 24, 2019 to the present. Defendant’s violations of California’s wage and hour laws and unfair
24 competition laws, as described more fully below, have been ongoing throughout the Class Period
25 and the PAGA Period.

26 VENUE

27 3. Venue is proper in this county under section 395.5 of the California Code of Civil
28 Procedure. Many of the putative Class Members and Aggrieved Employees were employed by

1 Defendant in San Diego County and/or performed work for Defendant in San Diego County during
2 the Class Period and the PAGA Period. Defendant is an online educational and teaching
3 company. Many of the acts alleged herein including Defendant's willful misclassification of its
4 teachers and instructors, its failure to pay all minimum wages owed overtime pay, its failure to
5 provide Labor Code compliant meal and rest breaks, and its failure to pay missed meal and rest
6 break premiums occurred in San Diego County. Venue is therefore proper in San Diego County.

7 **JURISDICTION**

8 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
9 dollars of business by online educational tools in California. Thus, Defendant has obtained the
10 benefits of the laws of the State of California. In addition, Plaintiff asserts no claims arising under
11 federal law. Rather, Plaintiff brings causes of action based solely on, and arising from, California
12 law. The claims of the class are also based solely on California law described herein.
13 Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than \$5
14 million. Thus, jurisdiction is proper in San Diego County Superior Court.

15 **THE PARTIES**

16 5. Plaintiff is a California resident and, from November 2019 through October 2020
17 was misclassified as an independent contractor but was actually an employee of Defendant
18 providing teaching services to students overseas using Defendant's online platform. From at least
19 one year prior to the filing of Plaintiff's LWDA notice through the present, and on-going,
20 Defendant's online teachers in California, including Plaintiff during her employment, were
21 willfully misclassified as independent contractors; were not provided compliant meal and rest
22 periods; were not paid all minimum wages and overtime wages owed; did not receive premium
23 payments for not being provided compliant meal and rest periods; were not provided accurate
24 and/or complete wage statements; did not receive timely wages; did not receive reimbursement for
25 their business expenses; and did not receive all of their wages due upon termination of
26 employment.

27 6. Plaintiff represents the state of California and the following group of aggrieved
28 employees defined as:

1 All individuals who performed services as teachers in California through Defendant's
2 platform since July 24, 2019 (hereinafter referred to as "Aggrieved Employees").

3 7. By way of this action, Plaintiff also seeks to represent the following Class
4 Members:

5 All individuals who performed services as teachers in California through Defendant's
6 platform since July 24, 2019.

7 8. Defendant is a foreign corporation with its principal place of business in Hong
8 Kong. Defendant is an online teaching company that transacted millions of dollars of business by
9 providing online teaching lessons to students in China. The Class is estimated to include 139
10 individuals as of March 25, 2021.

11 9. Despite its willful misclassification of Plaintiff, the Class, and the Aggrieved
12 Employees, Defendant was and is the employer of Plaintiff, the Aggrieved Employees, and Class
13 Members for all relevant time periods. In fact, Defendant employed Plaintiff, the Class, and the
14 Aggrieved Employees as online instructors in California at various times during the Class Period.
15 Defendant employed approximately 139 English teachers in California during the Class Period,
16 who were all willfully misclassified as independent contractors.

17 **FACTUAL ALLEGATIONS**

18 10. Defendant operates and, at all times during the Class Period and PAGA Period, has
19 done and does business in California by providing online tutorial services to students in mainland
20 China. Defendant, in the course of operating its business in California during the Class Period,
21 hired Plaintiff, the Class, and the Aggrieved Employees, even though they were misclassified and
22 classified incorrectly as independent contractors to teach English lessons using Defendant's
23 platform.

24 11. During the Class Period, Plaintiff, like the other members of the Class and
25 Aggrieved Employees, typically worked several hours per day and all days of the week. Class
26 Members' and Aggrieved Employees' job duties included preparing, teaching, and providing
27 feedback to the students after each class.

28 12. Plaintiff and the other members of the Class were required to show up before each

1 class, teach and provide feedback after each class. Plaintiff and the other members of the Class
2 were required to be prompt before each shift. Plaintiff and the other members of the Class
3 followed the direct instructions of the company regarding the method to teach, the materials to
4 teach and modules to follow.

5 13. Since at least July 24, 2016, including during the PAGA Period and the class
6 period, Defendant has maintained policies and practices based on or including the willful
7 misclassification of the Plaintiff, the Class, and Aggrieved Employees as independent contractors.
8 Under applicable standards of law, Plaintiff, the Class, and Aggrieved Employees are, or were
9 during their employment by Defendant, employees and not independent contractors.

10 14. The California Supreme Court in *Dynamex Operations West, Inc., v. Superior*
11 *Court*, 4 Cal. 5th 903, 956-57 (Cal. 2018) set forth the standard for determining whether an
12 individual performing work is an independent contractor or an employee, as follows:

13 We find merit in the concerns noted above regarding the disadvantages, particularly in
14 the wage and hour context, inherent in relying upon a multifactor, all the circumstances
15 standard for distinguishing between employees and independent contractors. As a
16 consequence, we conclude it is appropriate, and most consistent with the history and
17 purpose of the suffer or permit to work standard in California's wage orders, to interpret
18 that standard as: (1) placing the burden on the hiring entity to establish that the worker
19 is an independent contractor who was not intended to be included within the wage
20 order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to
establish *each* of the three factors embodied in the ABC test — namely (A) that the
worker is free from the control and direction of the hiring entity in connection with the
performance of the work, both under the contract for the performance of the work and
in fact; *and* (B) that the worker performs work that is outside the usual course of the
hiring entity's business; *and* (C) that the worker is customarily engaged in an
independently established trade, occupation, or business of the same nature as the work
performed. (citations omitted).

21 15. This standard – set forth by the California Supreme Court – is commonly referred to
22 as the “ABC test,” and was codified by California Assembly Bill 5 (2019). *See* Cal. Labor Code §
23 2750.3(a) (codifying the ABC test set forth by the California Supreme Court in *Dynamex*). Under
24 the ABC Test, Defendant has the burden of establishing that Plaintiff, the Class, and Aggrieved
25 Employees were independent contractors and not intended to be included within the wage order's
26 coverage. Recently, the *Dynamex* decision was held to be retroactive. *See Vasquez v. Jan-Pro*
27 *Franchising International Inc., 2021 wc 127201* (Cal. Jan 14, 2021). Further, Defendant must
28 establish that Plaintiff, the Class, and Aggrieved Employees meet all three factors of the ABC

1 Test, which Defendant cannot meet.

2 16. At all times, Defendant has retained the right to control the method and manner of
3 how Plaintiff, the Class, and Aggrieved Employees performed their job duties and retained all
4 necessary control over Plaintiff, the Class, and Aggrieved Employees during their employment.
5 As described above, Plaintiff, the Class, and Aggrieved Employees were required to follow
6 detailed requirements imposed on them by Defendant governing their work performance.

7 17. Further, Defendant unilaterally set pay rates of Plaintiff, the Class, and Aggrieved
8 Employees, without Plaintiff, the Class, and Aggrieved Employees having an opportunity to
9 negotiate pay rates with Defendant, and directed when and where Plaintiff, the Class, and
10 Aggrieved Employees were to perform work by paying per “class.”

11 18. As a result, under applicable law, Plaintiff, the Class, and Aggrieved Employees
12 were employees of Defendant and they were willfully misclassified as independent contractors.
13 *See* Labor Code section 226.8; *see also* *Dynamex Operations West, Inc., v. Superior Court*, 4 Cal.
14 5th 903, 956-57 (Cal. 2018); *Ayala v. Antelope Valley Newspapers, Inc.* 59 Cal.App.4th 522
15 (2014); *Ruiz v. Affinity Logistics, Corp.*, 754 F. Supp. 3d 1093 (9th Cir. 2014) (employer’s right to
16 control detail of employees’ work supports finding of employer-employee relationship); *Alexander*
17 *v. FedExGround Package System, Inc.* 765 F. Supp. 3d 381 (9th Cir. 2014) (independent
18 contractors were deemed employees as a matter of law where Defendant controlled times
19 employees worked and controlled aspects of employees’ work). *See also* *Villapando v. Excel*
20 *Direct, Inc.*, 2015 WL 15179486 (N.D. Cal. 2015) (granting summary judgment to Plaintiff on
21 Defendant’s defense that the employees at issue were independent contractors).

22 19. Through the performance of their job duties, Plaintiff, the Class, and Aggrieved
23 Employees performed an integral and entirely essential aspect of Defendant’s business.
24 Defendant’s business includes teaching language classes to the students in the mainland China.
25 Plaintiff, the Class, and the Aggrieved Employees were individuals performing the work that was
26 the customary function of Defendant’s practice. As such, there can be no doubt that Plaintiff, the
27 Class, and Aggrieved Employees performed work in the usual course of Defendant’s business.

28 20. Plaintiff, the Class, and Aggrieved Employees do not operate as independent

1 businesses. Rather, they provided teaching services to Defendant's customers, i.e., students, and in
2 compliance with Defendant's strict policies, practices, and procedures. Plaintiff, the Class, and
3 Aggrieved Employees did not provide teaching services for any other company or entity. In short,
4 Plaintiff, the Class, and Aggrieved Employees held themselves out to Defendant's customers and
5 to the public as employees of Defendant, and not as an independent business.

6 21. Because Defendant cannot meet any part of the ABC test, it is clear that Defendant
7 intentionally and willfully misclassified Plaintiff, the Class, and PAGA Aggrieved Employees as
8 independent contractors in violation of Labor Code § 226.8(a). Moreover, the willful
9 misclassification of Plaintiff, the Class, and PAGA Aggrieved Employees was part of a pattern or
10 practice of Defendant willfully misclassifying their teachers in California. Accordingly, the
11 stepped-up penalties in Section 226.8 should be recoverable here. California Labor Code §226.2
12 governs compensation paid to piece-rate employees, like Plaintiff, the Class, and the Aggrieved
13 Employees. It states, in the relevant part:

14 This section shall apply for employees who are compensated on a piece-rate
15 basis for any work performed during a pay period. This section shall not be construed to
16 limit or alter minimum wage or overtime compensation requirements, or the obligation
17 to compensate employees for all hours worked under any other statute or local
18 ordinance. For the purposes of this section, "applicable minimum wage" means the
19 highest of the federal, state, or local minimum wage that is applicable to the
20 employment, and "other nonproductive time" means time under the employer's control,
21 exclusive of rest and recovery periods, that is not directly related to the activity being
22 compensated on a piece-rate basis.

23 (a) For employees compensated on a piece-rate basis during a pay period, the
24 following shall apply for that pay period:

25 (1) Employees shall be compensated for rest and recovery periods and other
26 nonproductive time separate from any piece-rate compensation.

27 (2) The itemized statement required by subdivision (a) of Section 226 shall, in
28 addition to the other items specified in that subdivision, separately state the following, to
which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of
compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in
accordance with paragraph (7), the total hours of other nonproductive time, as
determined under paragraph (5), the rate of compensation, and the gross wages paid for
that time during the pay period.

22. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta*
v. Osmose, Inc. (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a

1 piece- rate basis, such as Plaintiff, the Class, and the Aggrieved Employees, must be compensated
2 for all the hours that they work, including non-productive time.

3 23. However, and due to Defendant's misclassification of Plaintiff, the Class, and the
4 Aggrieved employees as independent contractors, Plaintiff, the Class, and the Aggrieved
5 Employees were not paid for non-productive time while employed by the Defendant. Instead, they
6 only received compensation for each class taught through Defendant's interface. Thus, time spent
7 preparing for the class, making reports, planning their lessons and all other nonproductive tasks
8 typically taking up to an hour or more, was not compensated separately and hourly, as required by
9 law. As a result, Plaintiff, the Class, and the Aggrieved Employees were denied compensation for
10 all hours worked, in violation of Cal. Labor Code §1194, 226.2, and were denied compensation at
11 the minimum wage in violation of Cal. Labor Code §§1197, 1199, 1199.5.

12 24. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to
13 recover liquidated damages for violations of Labor Code § 1194. Where an employee, as
14 Plaintiff, the Class, and the other Aggrieved Employees are not paid for all hours worked
15 under Labor Code § 1194 and/or 226.2, the employee may recover minimum wages for the
16 time associated with the overtime for which they received no compensation. (See *Sillah v.*
17 *Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees
18 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
19 showed they were paid less than minimum wage]; *accord Andrade v. Arby's Rest. Grp., Inc.*
20 (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-2 I.)
21 Since Defendants failed to provide Plaintiff, the Class, and all Aggrieved Employees with
22 compensation for all hours worked, each are entitled to recover liquidated damages under
23 Labor Code §§ 1194.2 and 226.2 through PAGA. Based upon these same factual allegations,
24 Plaintiff also seeks on behalf of all Aggrieved Employees penalties under Labor Code §§
25 1199 and 1199.5.

26 25. Labor Code § 1197 states the California requirement that employees must be paid at
27 least the minimum wage fixed by the Commission, and any payment of less than the minimum
28 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the

1 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
2 minimum wage.” IWC Wage Order No. 4 also obligates employers to pay each employee
3 minimum wages for all hours worked.

4 26. These minimum wage standards apply to each hour employees worked for which
5 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
6 by an employee is unlawful, ***even if averaging an employee’s total pay over all hours worked,***
7 ***paid or not, results in an average hourly wage above minimum wage.*** *Armenta v. Osmose,*
8 *Inc.*, 135 Cal.App.4th 314, 324 (2005).

9 27. Labor Code § 1194.2 authorizes employees to recover liquidated damages in any
10 action under Labor Code § 1194 to recover unpaid minimum wages. Where an employee, such as
11 Plaintiff, was not paid for all hours worked under Labor Code § 1194, the employee may recover
12 minimum wages for the time worked for which they received no compensation. *See Sillah v.*
13 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
14 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
15 they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 2016 U.S.
16 Dist. LEXIS 172319, at *20-21 (N.D. Cal. Dec. 12, 2016).

17 28. Labor Code § 510 requires an employer to compensate an employee who works
18 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
19 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
20 rate of pay for an employee. In accordance with Labor Code § 1194, Plaintiff, the Class, and the
21 Aggrieved Employees could not then agree to work for a lesser wage than the amount proscribed
22 by Labor Code §§ 510 and 1194.

23 29. Further, because Plaintiff, the Class, and the Aggrieved Employees were
24 wrongfully classified as independent contractors, they did not receive the overtime premium pay
25 rates applicable to employees under California law for working in excess of eight hours in a day,
26 or more than forty hours in a workweek, in violation of IWC Wage Order 4-2001, and Labor Code
27 §§ 1194 and 510. Once in a blue moon, Plaintiff, the Class, and the Aggrieved Employees worked
28 shifts that were longer than 8 hours in length.

1 30. As a result of their misclassification of Plaintiff, the Class, and the Aggrieved
2 Employees as independent contractors, Defendant failed to provide Plaintiff, the Class, and the
3 other Aggrieved Employees with compensated, duty-free rest periods of not less than ten (10)
4 minutes for every major fraction of four hours worked pursuant to Labor Code § 226.7, and the
5 applicable IWC Wage Order.

6 31. Under the applicable IWC Wage Orders 4-2001 an employer must authorize and
7 permit all employees to take ten (10) minute duty free rest periods for every major fraction of four
8 hours worked. Labor Code § 226.7 provides “an employer shall not require an employee to work
9 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
10 regulation, standard, or order of the Industrial Welfare Commission (“IWC”).” Thus, the Wage
11 Orders set when and for how long the rest period must take place, and the Labor Code establishes
12 that violations of the Wage Order violate California law, and sets forth the premium pay employers
13 must pay their employees when employers fail to provide rest periods.

14 32. Because Defendant misclassified Plaintiff, the Class, and the Aggrieved Employees
15 as Independent Contractors, Defendant failed to implement a lawful rest period policy that
16 informed Plaintiff, the Class, and the other Aggrieved Employees of their right to receive lawful
17 rest periods for shifts that were more than at least a major fraction of four hours worked.
18 Specifically, Defendant failed to advise Plaintiff, the Class and the Aggrieved Employees of their
19 right to take paid duty-free ten (10) minute rest periods when working on a piece-rate basis and
20 failed to separately compensate Plaintiff, the Class and the Aggrieved Employees for the non-
21 productive time associated with their rest periods. *See Bluford v. Safeway Stores, Inc.*, 216 Cal.
22 App. 4th 864,872 (2013), reh'g denied (June 18, 2013), review denied (Aug. 28, 2013) ("rest
23 periods must be separately compensated in a piece-rate system. Rest periods are considered hours
24 worked and must be compensated.") (*citing Armenta v. Osmose, Inc.* 135 Cal.App.4th 314,323
25 (2005)).

26 33. Here as in *Bluford*, Defendant compensated Plaintiff, the Class and the other
27 Aggrieved Employees by way of a piece-rate system for each class taught. As a result, when
28 they were not actively teaching, but rather taking a mandated rest period, they were not

1 compensated for their time, in violation of Labor Code section 226.7 and Wage Orders 4-
2 2001.

3 34. Pursuant to Labor Code § 226.7 and Wage Orders 4-2001, Defendant failed to
4 provide Plaintiff, the Class and all Aggrieved Employees with duty-free rest periods of not less
5 than ten (10) minutes for every major fraction of four (4) hours worked. Specifically, as a
6 result of their misclassification of Plaintiff, the Class and the Aggrieved Employees as
7 independent contractors, Defendant failed to have a lawful rest period policy in place that
8 informed Plaintiff, the Class and the other Aggrieved Employees of their right to take rest
9 periods for shifts that were a major fraction of a four (4) hour work period and to make rest
10 breaks available to these employees.

11 35. The California Supreme Court in *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th
12 1004, explained in the context of rest breaks that employer liability attaches from adopting an
13 unlawful policy:

14 An employer is required to authorize and permit the amount of rest break time called
15 for under the wage order for its industry. If it does not-if, for example, it adopts a
16 uniform policy authorizing and permitting only one rest break for employees working a
seven-hour shift when two are required-it has violated the wage order and is liable.

17 *Id.* at 1033. Since Defendant did not offer employees the opportunity to receive a compliant
18 and appropriately separately compensated rest periods, "the court may not conclude
19 employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care*,
20 241 Cal. App. 4th 388, 410 (2015) ("[i]f an employer fails to provide legally compliant meal
21 or rest breaks, the court may not conclude employees voluntarily chose to skip those
22 breaks."); accord *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1033 (2012) ("No issue of
23 waiver ever arises for a rest break that was required by law but never authorized; if a break is
24 not authorized, an employee has no opportunity to decline to take it.").

25 36. Even an employer who maintains an otherwise compliant rest period policy,
26 "reminded their employees of their availability-and the importance-of taking breaks on a daily
27 basis, and even went so far as to conduct regular audits to ensure that employees were being
28 offered rest breaks" will still be liable for rest period violations if the employees were not

1 separately or properly compensated for the non- productive time associated with rest periods
2 under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist.
3 LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd* *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS
4 112540, 20 I 6 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. Case
5 No. 0:16-23f-80120 (9th Cir. Nov. 16, 2016).

6 37. Here, Defendant did not have a rest period policy and did not compensate
7 Plaintiff, the Class, and the Aggrieved Employees for their rest periods. Often Plaintiff, the
8 Class and the Aggrieved Employees had to work several classes back-to-back, frequently in
9 excess of 3.51 hours, which would trigger a paid rest break Plaintiff, the Class and all
10 Aggrieved Employees were not compensated with one (1) hour's worth of pay at their regular
11 rate of compensation when they were not provided with a compliant rest period.

12 38. Labor Code § 512 requires employers to provide employees with thirty (30) minute
13 uninterrupted and duty-free meal period within the first five hours of work.

14 39. As with rest periods, under Labor Code § 512, if an employer maintains a uniform
15 policy that does not authorize and permit the amount of mealtime called for under the law (as
16 specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker*
17 Court explained in the context of rest breaks that employer liability attaches from adopting an
18 unlawful policy:

19 An employer is required to authorize and permit the amount of rest break time called for
20 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
21 policy authorizing and permitting only one rest break for employees working a seven-hour
shift when two are required—***it has violated the wage order and is liable.***

22 *Brinker Rest. Corp. v. Sup. Ct., supra*, 53 Cal.4th at 1033. (Emphasis added.)

23 40. As a result of Defendant misclassifying Plaintiff, the Class, and the Aggrieved
24 Employees as independent contractors, Defendant violated Labor Code § 512 by failing to advise
25 Plaintiff, the Class, and all Aggrieved Employees of their right to receive thirty (30) minute
26 uninterrupted meal periods within the first five hours of the employee’s shift. In fact, because
27 Defendant misclassified Plaintiff, the Class, and the Aggrieved Employees as independent
28 contractors, they did not set any policies providing meal periods to Plaintiff, the Class, and the

1 Aggrieved Employees. To the contrary, Plaintiff, the Class, and the Aggrieved Employees were
2 informed that they had to start a class within an allotted time, or they would be subject to a penalty
3 (which was the ability to book for a class for 48 hours). Defendant's policies were such that
4 Plaintiff, the Class and the Aggrieved Employees were prevented from taking meal periods of 30
5 minutes as required by law.

6 41. As a result of Defendant's failure to authorize or permit lawful meal periods
7 because Defendant misclassified Plaintiff, the Class, and the Aggrieved Employees as independent
8 contractors, Plaintiff, the Class, and the other Aggrieved Employees did not receive duty-free meal
9 periods within the first five (5) hours of their work, when teaching more than 5 hours. Defendant
10 also failed to pay Plaintiff, the Class, and the other Aggrieved Employees meal period premiums
11 for each workday that the employees did not receive a compliant duty-free meal period.

12 42. Similarly, the applicable IWC Wage Order 4-2001, prohibits an employer from
13 "employ[ing] any person for a work period of more than five (5) hours without a meal period of
14 not less than 30 minutes. The applicable IWC Wage Order 4-2001 further obligates employers to
15 provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of
16 compensation for each workday that the meal period is not provided. Labor Code § 226.7 provides
17 "an employer shall not require an employee to work during a meal or rest or recovery period
18 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
19 Industrial Welfare Commission ("IWC"). Accordingly, for each day that Plaintiff, the Class, and
20 the other Aggrieved Employees did not receive compliant meal periods, they are entitled to receive
21 meal period premiums pursuant to Labor Code § 226.7 and Wage Orders 4-2001.

22 43. Furthermore, by virtue of the misclassification, Defendant did not and does not
23 issue adequate wage statements to Plaintiff, the Class, and the Aggrieved Employees, under Labor
24 Code Sections 226(a) and 226.2.

25 44. Plaintiff, the Class and the Aggrieved Employees did not receive any wage
26 statements, let alone compliant wage statements, from Defendant. Plaintiff, the Class, and the
27 Aggrieved Employees received less than \$8.00 per class, which was below minimum wage. There
28 was no paystub or wage statement attached to the check or any description of the number of the

1 hours that each employee worked. They received their check only on a monthly basis.
2 Furthermore, Plaintiff, the Class, and the Aggrieved Employees did not use any clock-in and
3 clock-out system, so Defendant did not track their actual hours worked for the hours worked prior
4 to each class and after each class. They were required to prepare a report for each student at the
5 end of each class.

6 45. Due to, *inter alia*, Defendant's failure to pay Plaintiff, the Class, and the Aggrieved
7 Employees minimum wages, overtime payments and meal and rest break premiums, as well as
8 Defendant's failure to track actual hours worked, the wage statements issued by Defendants to
9 Plaintiff, the Class, and the Aggrieved Employees do not indicate the correct amount of gross
10 wages earned, total hours worked, net wages earned, hours worked, or the applicable hourly rates
11 in effect during the pay period and the corresponding number of hours worked at each hourly rate
12 in violation of Labor Code § 226(a)(1), (2), (5) and (9).

13 46. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*
14 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
15 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
16 that it was not providing total hours worked to plaintiff or other employees paid on commission"
17 even though it believed that employees paid solely on commission or commission and salary "are
18 exempt and therefore we do not record hours on a wage statement").

19 47. Defendant's failure to furnish accurate itemized wage statements has caused
20 Plaintiff, the Class, and the Aggrieved Employees to incur economic damages in that they were not
21 aware that they were owed and not paid compensation for their time spent for all hours worked
22 work. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to
23 add up the daily hours shown on the time cards or other records so that the employee must perform
24 arithmetic computations to determine the total hours worked during the pay period, the
25 requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp.
26 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, *inter*
27 *alia*, total hours worked giving rise to claims under both Section 226 and for PAGA penalties);
28 *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005) (reversing summary

1 judgment for defendants where wage statements did not “give an accurate report of the hours
2 plaintiff worked, at least not on its face”); Labor Code § 226(e)(2)(B) (clarifying that injury is
3 established where the wage statement violated Section 226(a)(1), (2), or (5), among other
4 provisions, and where employees cannot easily determine the gross or net wages earned by the
5 employee during the pay period).

6 48. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor
7 Code § 226(a) without the need to show wilfulness or injury. *See Lopez v. Friant & Assoc. LLC*,
8 15 Cal. App.5th 773, 788 (2017) (a plaintiff seeking PAGA penalties for a violation of Labor Code
9 section 226(a) does not have to show injury or a knowing and intentional violation); *Willner v.*
10 *Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA
11 claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as
12 discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011)
13 (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of
14 Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*,
15 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to
16 establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).
17 Plaintiff, the class and the Aggrieved employees are entitled to penalties under sections 226(e) and
18 226.3.

19 49. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
20 employee, the wages earned and unpaid at the time of discharge are due and payable
21 immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written
22 contract for a definite period quits his or her employment, his or her wages shall become due and
23 payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice
24 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
25 of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement
26 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of
27 an employee who is discharged or who quits, the wages of the employee shall continue as a
28 penalty from the due date thereof at the same rate until paid or until an action therefor is

1 commenced; but the wages shall not continue for more than 30 days.”

2 50. Following Plaintiff’s separation of employment from Defendant, she, like other
3 members of the Class and Aggrieved Employees who are former employees of Defendant, did not
4 receive all wages due, including all minimum wages owed, wages due for overtime and her unpaid
5 meal and rest break premiums during the Class Period, in violation of Labor Code Sections 201-
6 203, triggering waiting time penalties under those provisions.

7 51. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
8 employment are due and payable twice during each calendar month, on days designated in advance
9 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
10 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
11 wages are paid not more than seven calendar days following the close of the payroll period.”

12 52. Due to Defendant’s failure to pay Plaintiff, the Class, and the Aggrieved Employees
13 all minimum and overtime wages and meal and rest period premiums, Defendant failed to timely
14 pay Plaintiff, the Class, and the Aggrieved Employees within seven (7) days of the close of the
15 payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson*
16 *v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal.
17 May 2, 2016) (finding that a failure to pay rest period premiums can support claims under Labor
18 Code §§ 203 and 204).

19 53. Pursuant to Labor Code Section 210, as amended,

20 (a) In addition to, and entirely independent and apart from, any other penalty
21 provided in this article, every person who fails to pay the wages of each employee as
22 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
shall be subject to a penalty as follows:

23 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay
24 each employee.

25 (2) For each subsequent violation, or any willful or intentional violation, two
26 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent
of the amount unlawfully withheld.

27 (b) The penalty shall either be recovered by the employee as a statutory penalty
28 pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the
issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
contesting, and enforcing judgments for citations issued by the Labor Commissioner

1 under this section shall be the same as those set forth in subdivisions (b) through (k),
2 inclusive, of Section 1197.1.

3 (c) An employee is only entitled to either recover the statutory penalty provided for in
4 this section or to enforce a civil penalty as set forth in subdivision (a) of Section
5 2699, but not both, for the same violation.

6 54. Here, Plaintiff seeks to recover all penalties available under Labor Code Section
7 210 for Defendant's violations of Labor Code Section 204.

8 55. Plaintiff, the Class, and the Aggrieved Employees regularly incurred expenses
9 during the course of their employment, such as phone usage, educational materials such as colored
10 papers, whiteboards, computer lamp, laptop usage, internet, and electricity, for which they were
11 not reimbursed. In addition, in order to perform their duties, Plaintiff, the Class, and the Aggrieved
12 Employees used their own personal computer and internet to Defendant's customers.

13 56. Cal. Labor Code §2802 (a) provides that:

14 An employer shall indemnify his or her employee for all necessary expenditures or losses
15 incurred by the employee in direct consequence of the discharge of his or her duties, or of
16 his or her obedience to the directions of the employer, even though unlawful, unless the
17 employee, at the time of obeying the directions, believed them to be unlawful.

18 57. Thus, employees such as Plaintiff, the Class, and the Aggrieved Employees, are
19 entitled to reimbursement for the expenses they incur during the course of their duties. The duty to
20 reimburse even extends to the use of equipment the employee may already own, and would be
21 required to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137,
22 1144 ("The threshold question in this case is this: Does an employer always have to reimburse an
23 employee for the reasonable expense of the mandatory use of a personal cell phone, or is the
24 reimbursement obligation limited to the situation in which the employee incurred an extra expense
25 that he or she would not have otherwise incurred absent the job? The answer is that reimbursement
26 is always required. Otherwise, the employer would receive a windfall because it would be passing
27 its operating expenses on to the employee.") After all, the purpose of 2802 is to "prevent employers
28 from passing along their operating expenses onto their employees." *Gattuso v. Harte-Hanks
Shoppers, Inc.*, (2007) 42 Cal. 4th 554, 562.

58. Here, Defendant did not have a reimbursement policy for Plaintiff, the Class, and

1 the Aggrieved Employees for their reasonable and necessary business expenses. Instead, the
2 opposite was true: Defendant's contracts with Plaintiff and the Aggrieved Employees specifically
3 required Plaintiff, the Class, and the Aggrieved Employees to pay for their own expenses,
4 including personal cell phone and computer usage for work-related functions, while performing
5 their duties.¹ Thus, it is clear that not only did Plaintiff, the Class, and the Aggrieved
6 Employees incur expenses as a result of their employment, but that Defendant had an actual and/or
7 constructive knowledge of those expenses, and anticipating them, informed Plaintiff, the Class,
8 and the Aggrieved Employees that it would not provide any reimbursement. Therefore, Plaintiff is
9 aggrieved employee within the meaning of PAGA and Defendant has violated § 2802 with respect
10 to Plaintiff, the Class, and the Aggrieved Employees.

11 59. The administrative prerequisites of PAGA were satisfied after 65 days elapsed from
12 July 24, 2020 (i.e., 65 days since Plaintiff's mailing of the PAGA notice with no further
13 communication from the LWDA to Plaintiff's counsel). In addition, both Parties entered into a
14 tolling agreement prior to filing this current lawsuit. Plaintiff has paid the \$75.00 fee and has
15 otherwise satisfied the administrative prerequisites of PAGA, as amended. Plaintiff then submitted
16 an Amended PAGA Letter on April 12, 2021.

17 60. Plaintiff by this action seeks to recover, on behalf of herself and all other current
18 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
19 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
20 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
21 *Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

22 CLASS ACTION ALLEGATIONS

23 61. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
24 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
25 composed of and defined as: all individuals who performed services as teachers in California
26 through Defendant's platform from July 24, 2019 onward ("Class Members"). All such Class
27

28 ¹ Under Labor Code §2804, any agreement that waives the benefit of Labor Code §2802 is null and void.

1 Members were subject to Defendant's unlawful misclassification, and, as a result, were not paid
2 minimum wage, overtime, and were not provided compliant meal and rest breaks.

3 62. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
6 Class:

7 a. Numerosity: The potential members of the Class as defined are so
8 numerous that joinder of all the members of the Class is impracticable. While the precise number
9 of Class Members has not been determined at this time, Plaintiff is informed and believes that
10 Defendant has utilized the services of approximately 140 Class Members as teachers in California
11 who were subject to Defendant's unlawful misclassification. The Class Members are dispersed
12 throughout California. Joinder of all members of the proposed classes is therefore not practicable.

13 b. Commonality: There are questions of law and fact common to Plaintiff and
14 the Class that predominate over any questions affecting only individual members of the Class.
15 These common questions of law and fact include, without limitation:

16 i. Whether Defendant violated Section 226.8 of the Labor Code by willfully
17 misclassifying Plaintiff and Class Members as independent contractors, and whether Defendant
18 engaged in a pattern and practice of such wrongful misclassification;

19 ii. Whether Defendant violated sections 226.2 and 1194 of the Labor Code by
20 failing to pay all minimum wages owed to Plaintiff and the Class during the Class Period;

21 iii. Whether Defendant violated Section 510 of the Labor Code by failing to pay
22 overtime to Plaintiff and the Class during the Class Period;

23 iv. Whether Defendant violated Labor Code section 226.7 and Section 12 of
24 IWC Wage Order No. 4 by failing to provide compliant rest periods to Plaintiff and the members
25 of the Class in California during the Class Period;

26 v. Whether Defendant violated Labor Code section 226.7 and section 12 of
27 IWC Wage Order No. 4 by failing to pay one hour of premium pay to each member of the Class for
28 each day that a compliant rest break was not provided during the Class Period;

vi. Whether Defendant violated Labor Code sections 226.7 and 512 and Section 11 of IWC Wage Order No. 4 by failing to provide compliant meal periods to Plaintiff and the members of the Class in California during the Class Period;

vii. Whether Defendant violated Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 4 by failing to pay one hour of premium pay to each member of the Class for each day that a compliant meal break was not provided during the Class Period;

viii. Whether Defendant failed to provide Plaintiff and the members of the Class complete and timely wage statements in violation of Labor Code Section 226(a);

ix. Whether Defendant violated Section 201-203 of the Labor Code by failing to pay all wages owed to former employees upon separation of employment during the Class Period;

x. Whether Defendant violated Sections 204 and 210 of the Labor Code by failing to pay member of the Class all wages due on a timely basis;

xi. Whether Defendant violated section 2802 of the Labor Code by failing to reimburse business expenses incurred by the Class during the Class Period;

xii. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide compliant rest breaks to members of the Class in violation of Section 12 of IWC Wage Order No. 4;

xiii. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide Plaintiff and members of the Class with rest period premiums for each day they were not provided a compliant rest break;

xiv. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide compliant meal breaks to members of the Class in violation of Section 12 of IWC Wage Order No. 4;

xv. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide Plaintiff and members of the Class with meal period premiums for each day they were not provided a compliant meal break;

xvi. Whether Plaintiff and the Class are entitled to restitution under Business and

1 Professions Code § 17200;

2 xvii. The proper formula(s) for calculating damages, interest, and restitution
3 owed to Plaintiff and the Class Members;

4 xviii. The nature and extent of class-wide damages.

5 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
6 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
7 belonging to them, arising out of and caused by Defendant's common course of conduct in
8 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

9 d. Adequacy of Representation: Plaintiff is a member of the Class and will
10 fairly and adequately represent and protect the interests of the Class and Class Members.
11 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
12 Plaintiff are competent and experienced in litigating large wage and hour class actions, including
13 numerous cases virtually identical to this one (i.e., misclassification cases), and other employment
14 class actions, and will devote sufficient time and resources to the case and otherwise adequately
15 represent the Class and Class Members.

16 e. Superiority of Class Action: A class action is superior to other available
17 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
18 Members is not practicable, and questions of law and fact common to the Class predominate over
19 any questions affecting only individual members of the Class. Each Class Member has been
20 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
21 practices. Certification of this case as a class action will allow those similarly situated persons to
22 litigate their claims in the manner that is most efficient and economical for the parties and the
23 judicial system. Certifying this case as a class action is superior because it allows for efficient and
24 full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful
25 misclassification, compensation, and meal and rest break policies, and will thereby effectuate
26 California's strong public policy of protecting employees from deprivation or offsetting of
27 compensation earned in their employment. If this action is not certified as a Class Action, it will
28 be impossible as a practical matter, for many or most Class Members to bring individual actions to

1 recover monies unlawfully withheld from their lawful compensation due from Defendant's, due to
2 the relatively small amounts of such individual recoveries relative to the costs and burdens of
3 litigation.

4 **FIRST CAUSE OF ACTION**
5 **PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION OF ALL OF**
6 **DEFENDANT'S ONLINE TEACHERS**
7 **[Cal. Labor Code §§ 2698 *et seq.* 2750.2 and 226.8(a)(1) and 226.8(b) or 226.8(c)]**
8 **On behalf of Plaintiff, the LWDA and the PAGA Aggrieved Employees**

9 63. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
10 in the preceding paragraphs.

11 64. Plaintiff and similarly situated employees are "Aggrieved Employees" under the
12 PAGA as they were employed by Defendant during the applicable statutory period and suffered
13 the Labor Code violation alleged herein. At all times relevant hereto, Plaintiff and Aggrieved
14 Employees were employees for purposes of the California Labor Code, although they were
15 willfully misclassified as independent contractors.

16 65. In violation of the Labor Code provisions cited herein and in willful violation of
17 California law and public policy, Defendant intentionally misclassified Plaintiff and Aggrieved
18 Employees as independent contractors in violation of Labor Code § 226.8(a). This was part of a
19 pattern as practice of willful misclassification of all, or virtually all, of Defendant's teachers
20 thereby triggering heightened penalties under sections 226.8(b) and (c).

21 66. The administrative prerequisites of PAGA will be satisfied after 66 days have
22 elapsed from July 24, 2020 (i.e., 60 days since Plaintiff's mailing of the PAGA notice with no
23 further communication from the LWDA to Plaintiff's counsel). The actionable period is one year
24 prior to the sending of the LWDA letter through the present. Plaintiff has paid the \$75.00 fee and
25 has otherwise satisfied the administrative prerequisites of PAGA, as amended.

26 67. Plaintiff by this action seeks to recover, on behalf of herself and all other current
27 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
28 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*

1 *Court*, 46 Cal. 4th 969(2009). Therefore, class certification of the PAGA claims is not required.
2 *Id.*

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PAY MINIMUM WAGES**
5 **[Cal. Labor Code §§ 226.2, 1194]**
6 **On behalf of Plaintiff and the Class**

7 68. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
8 in the preceding paragraphs.

9 69. The actionable period for this cause of action is three years prior to the filing of the
10 Complaint through the present, and on-going until the violations are correct or the Class is
11 certified.

12 70. California Labor Code §226.2 governs compensation paid to piece-rate employees,
13 like Plaintiff and the Class. It states, in the relevant part:

14 This section shall apply for employees who are compensated on a piece-rate
15 basis for any work performed during a pay period. This section shall not be construed to
16 limit or alter minimum wage or overtime compensation requirements, or the obligation
17 to compensate employees for all hours worked under any other statute or local
18 ordinance. For the purposes of this section, “applicable minimum wage” means the
19 highest of the federal, state, or local minimum wage that is applicable to the
20 employment, and “other nonproductive time” means time under the employer’s control,
21 exclusive of rest and recovery periods, that is not directly related to the activity being
22 compensated on a piece-rate basis.

23 (a) For employees compensated on a piece-rate basis during a pay period, the
24 following shall apply for that pay period:

25 (1) Employees shall be compensated for rest and recovery periods and other
26 nonproductive time separate from any piece-rate compensation.

27 (2) The itemized statement required by subdivision (a) of Section 226 shall,
28 in addition to the other items specified in that subdivision, separately state the
following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the
rate of compensation, and the gross wages paid for those periods
during the pay period.

(B) Except for employers paying compensation for other
nonproductive time in accordance with paragraph (7), the total hours of
other nonproductive time, as determined under paragraph (5), the rate
of compensation, and the gross wages paid for that time during the pay
period.

71. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta*
v. Osmose, Inc. (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a

1 piece- rate basis, such as Plaintiff, the Class, and the Aggrieved Employees, must be compensated
2 for all the hours that they work, including non-productive time.

3 72. However, and due to Defendant's misclassification of Plaintiff and the Class as
4 independent contractors, Plaintiff and the Class were not paid for non-productive time while
5 employed by the Defendant. Instead, they only received compensation for each class taught
6 through Defendant's interface. Thus, time spent preparing for the class, making reports, planning
7 their lessons and all other nonproductive tasks typically taking up to an hour or more, was not
8 compensated separately and hourly, as required by law. As a result, Plaintiff and the Class, were
9 denied compensation for all hours worked, in violation of Cal. Labor Code §1194, 226.2, and were
10 denied compensation at the minimum wage in violation of Cal. Labor Code §§1197, 1199, 1199.5.

11 73. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to
12 recover liquidated damages for violations of Labor Code § 1194. Where an employee, as
13 Plaintiff and the Class are not paid for all hours worked under Labor Code § 1194 and/or
14 226.2, the employee may recover minimum wages for the time associated with the overtime
15 for which they received no compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal.
16 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime could
17 recover liquidated damages under § 1194.2 if they also showed they were paid less than
18 minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-
19 cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-2 I.) Since Defendant failed to provide
20 Plaintiff, the Class, and all Aggrieved Employees with compensation for all hours worked,
21 each are entitled to recover liquidated damages under Labor Code §§ 1194.2 and 226.2
22 through PAGA. Based upon these same factual allegations, Plaintiff also seeks on behalf of
23 all Aggrieved Employees penalties under Labor Code §§ 1199 and 1199.5.

24 **THIRD CAUSE OF ACTION**
25 **FAILURE TO PAY OVERTIME WAGES**
26 **[Cal. Labor Code § 510]**
On behalf of Plaintiff and the Class

27 74. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
28 in the preceding paragraphs.

1 75. The actionable period for this cause of action is three years prior to the filing of the
2 Complaint through the present, and on-going until the violations are correct or the Class is
3 certified.

4 76. Labor Code § 510 provides that any work in excess of eight hours on any day, as
5 well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at
6 the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order
7 No. 4.

8 77. Here, Defendant hired Plaintiff and the Class to work as online teachers in
9 California. Plaintiff and the Class occasionally worked in excess of 8 hours and over 40 hours per
10 week. Defendant only paid Plaintiff and the Class the regular hourly rate per each class. To make
11 matters worse, Defendant just issued an invoice sheet and a check for all the classes worked by
12 Plaintiff and the Class. Plaintiff and the Class did not receive any compensation for the overtime
13 hours that they worked beyond their classes per day.

14 78. Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 4,
15 Defendant did not pay Plaintiff and the Class any overtime wages corresponding to one and a half
16 time of Plaintiff and the Class' hourly rates of pay. Plaintiff and the Class often worked eight hours
17 per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing
18 to pay Plaintiff and the Class their overtime wages at the applicable overtime rates, including daily
19 overtime and weekly overtime, and instead merely paid Plaintiff and the Class straight time wages
20 for all hours worked.

21 **FOURTH CAUSE OF ACTION**
22 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
23 **AND PAY MISSED REST BREAK PREMIUMS**
24 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 4]**
25 **On behalf of Plaintiff and the Class**

26 79. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
27 in the preceding paragraphs.

28 80. The actionable period for this cause of action is three years prior to the filing of the
Complaint through the present, and on-going until the violations are corrected or the Class is

1 certified.

2 81. As a result of their misclassification of Plaintiff and the Class as independent
3 contractors, Defendants failed to provide Plaintiff and the other Class with compensated, duty-free
4 rest periods of not less than ten (10) minutes for every major fraction of four hours worked
5 pursuant to Labor Code § 226.7, and the applicable IWC Wage Order.

6 82. Under the applicable IWC Wage Orders 4-2001 an employer must authorize and
7 permit all employees to take ten (10) minute duty free rest periods for every major fraction of four
8 hours worked. Labor Code § 226.7 provides “an employer shall not require an employee to work
9 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
10 regulation, standard, or order of the Industrial Welfare Commission (“IWC”).” Thus, the Wage
11 Orders set when and for how long the rest period must take place, and the Labor Code establishes
12 that violations of the Wage Order violate California law, and sets forth the premium pay employers
13 must pay their employees when employers fail to provide rest periods.

14 83. Because Defendant misclassified Plaintiff and the Class as Independent
15 Contractors, Defendants failed to implement a lawful rest period policy that informed Plaintiff and
16 the Class of their right to receive lawful rest periods for shifts that were more than at least a major
17 fraction of four hours worked. Specifically, Defendant failed to advise Plaintiff and the Class of
18 their right to take paid duty-free ten (10) minute rest periods when working on a piece-rate basis
19 and failed to separately compensate Plaintiff and the Class for the non-productive time associated
20 with their rest periods. *See Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864,872 (2013),
21 reh'g denied (June 18, 2013), review denied (Aug. 28, 2013) ("rest periods must be separately
22 compensated in a piece-rate system. Rest periods are considered hours worked and must be
23 compensated.") (*citing Armenta v. Osmose, Inc.* 135 Cal.App.4th 314,323 (2005)).

24 84. Here as in *Bluford*, Defendant compensated Plaintiff and the Class by way of a
25 piece-rate system for each class taught. As a result, when they were not actively teaching, but
26 rather taking a mandated rest period, they were not compensated for their time, in violation of
27 Labor Code section 226.7 and Wage Orders 4-2001.

28 85. Pursuant to Labor Code § 226.7 and Wage Orders 4-2001, Defendant failed to

1 provide Plaintiff and the Class with duty-free rest periods of not less than ten (10) minutes for
2 every major fraction of four (4) hours worked. Specifically, as a result of their
3 misclassification of Plaintiff and the Class as independent contractors, Defendants failed to
4 have a lawful rest period policy in place that informed Plaintiff and the Class of their right to
5 take rest periods for shifts that were a major fraction of a four (4) hour work period and to
6 make rest breaks available to these employees.

7 86. Since Defendant did not offer employees the opportunity to receive a compliant
8 and appropriately separately compensated rest periods, "the court may not conclude
9 employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care*,
10 241 Cal. App. 4th 388, 410 (2015) ("[i]f an employer fails to provide legally compliant meal
11 or rest breaks, the court may not conclude employees voluntarily chose to skip those
12 breaks."); accord *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1033 (2012) ("No issue of
13 waiver ever arises for a rest break that was required by law but never authorized; if a break is
14 not authorized, an employee has no opportunity to decline to take it.").

15 87. Even an employer who maintains an otherwise compliant rest period policy,
16 "reminded their employees of their availability-and the importance-of taking breaks on a daily
17 basis, and even went so far as to conduct regular audits to ensure that employees were being
18 offered rest breaks" will still be liable for rest period violations if the employees were not
19 separately or properly compensated for the non- productive time associated with rest periods
20 under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist.
21 LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd* *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS
22 112540, 20 I 6 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. Case
23 No. 0:16-23f-80120 (9th Cir. Nov. 16, 2016).

24 88. Here, Defendant did not have a rest period policy and did not compensate
25 Plaintiff and the Class for their rest periods. Often Plaintiff and the Class had to work several
26 classes back-to-back, frequently in excess of 3.51 hours, which would trigger a paid rest break
27 Plaintiff and the Class were not compensated with one (1) hour's worth of pay at their regular
28 rate of compensation when they were not provided with a compliant rest period.

FIFTH CAUSE OF ACTION
**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND PAY MISSED MEAL
BREAK PREMIUMS**

**[Cal. Labor Code §§ 226.7, 512; Section 11 of IWC Wage Order No. 4]
On behalf of Plaintiff and the Class**

89. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

90. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violations are connected or the subclass is certified.

91. Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work.

92. As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of mealtime called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., supra, 53 Cal.4th at 1033. (Emphasis added.)

93. As a result of Defendant misclassifying Plaintiff and the Class as independent contractors, Defendant violated Labor Code § 512 by failing to advise Plaintiff and the Class of their right to receive thirty (30) minute uninterrupted meal periods within the first five hours of the employee’s shift. In fact, because Defendant misclassified Plaintiff and the Class as independent contractors, they did not set any policies providing meal periods to Plaintiff and the Class. To the contrary, Plaintiff and the Class were informed that they had to start a class within an allotted time, or they would be subject to a penalty (which was the ability to book for a class for 48 hours). Defendant’s policies were such that Plaintiff and the Class were prevented from taking meal

1 periods of 30 minutes as required by law.

2 94. As a result of Defendant's failure to authorize or permit lawful meal periods
3 because Defendant misclassified Plaintiff and the Class as independent contractors, Plaintiff and
4 the Class did not receive duty-free meal periods when they worked occasionally more than five (5)
5 hours. Defendant also failed to pay Plaintiff and the Class, meal period premiums for each
6 workday that the employees did not receive a compliant duty-free meal period.

7 95. Similarly, the applicable IWC Wage Order 4-2001, prohibits an employer from
8 "employ[ing] any person for a work period of more than five (5) hours without a meal period of
9 not less than 30 minutes. The applicable IWC Wage Order 4-2001 further obligates employers to
10 provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the meal period is not provided. Labor Code § 226.7 provides
12 "an employer shall not require an employee to work during a meal or rest or recovery period
13 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
14 Industrial Welfare Commission ("IWC"). Accordingly, for each day that Plaintiff and the Class did
15 not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to
16 Labor Code § 226.7 and Wage Orders 4-2001.

17 **SIXTH CAUSE OF ACTION**
18 **FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS**
19 **[Cal. Labor Code § 226(a) and 226 (e)]**
20 **On behalf of Plaintiff and the Wage Statement and Penalty Subclass**

21 96. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
22 in the preceding paragraphs.

23 97. The actionable period for this cause of action is one year prior to the filing of this
24 Complaint through the present, and on-going until the violations are connected or the subclass is
25 certified.

26 98. Section 226(a) of the California Labor Code provides, in relevant part:

27 Every employer shall...furnish each of his or her employees...an accurate
28 itemized statement in writing showing (1) gross wages earned, (2) total hours
worked by the employee, except for any employee whose compensation is
solely based on a salary and who is exempt from payment of overtime under
subdivision (a) of Section 515 or any applicable order of the Industrial

1 Welfare Commission, (3) the number of piece-rate units earned and any
2 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
3 deductions, provided that all -deductions made on written orders of the
4 employee may be aggregated and shown as one item, (5) net wages earned,
5 (6) the inclusive dates of the period for which the employee is paid, (7) the
6 name of the employee and only the last four digits of his or her social security
7 number or an employee identification number other than a social security
8 number, (8) the name and address of the legal entity that is the employer and
9 (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee...

11 99. As set forth above, through the Class Period, due to misclassification, Defendant
12 failed to issue wage statements to its teachers in California, including Plaintiff, that complied with
13 Labor Code Section 226(a).

14 100. Defendant's violation of Labor Code § 226 was knowing and intentional. See Labor
15 Code § 226(e)(2) and (B). *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6,
16 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because
17 the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees
18 paid on commission" even though it believed that employees paid solely on commission or
19 commission and salary "are exempt and therefore we do not record hours on a wage statement");
20 See also Cal. Labor Code Section 226.2.

21 101. As a result of Defendant's failure to issue itemized wage statements to Plaintiff and
22 members of the wage statement and penalty subclass (i.e., those members of the class who were
23 employed by Defendant during the actionable period for this cause of action) in violation of
24 section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to recover an
25 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an
26 aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendant
27 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

28
SEVENTH CAUSE OF ACTION
WAITING TIME PENALTIES FOR
FAILURE TO PAY WAGES DUE ON TERMINATION
[Cal. Labor Code §§ 201-203]
On Behalf of Plaintiff and the Waiting Time Penalty Subclass

102. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraphs.

2 103. The actionable period for this cause of action is three years prior to the filing of the
3 Complaint through the present, and on-going until the violations are corrected or the subclass is
4 certified.

5 104. Sections 201 and 202 of the California Labor Code require Defendant to pay all
6 compensation due and owing to former teachers in the Class during the actionable period for this
7 cause of action, at or around the time that their employment is terminated.

8 105. Section 203 of the California Labor Code provides that if an employer willfully
9 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
10 202, then the employer is liable for penalties in the form of continued compensation up to thirty
11 (30) workdays.

12 106. By virtue of its willful misclassification, Defendant willfully failed to pay Plaintiff
13 and other members of the waiting time penalty Subclass (i.e., those members of the Class whose
14 employment with Defendant ended the actionable period for this cause of action) who are no
15 longer employed by Defendant minimum wages, overtime wages and meal and rest break
16 premiums as required by California Labor Code §§ 201 and 202.

17 107. As a result, Defendant is liable to Plaintiff and other members of the waiting time
18 penalty subclass who are no longer employed by Defendant for waiting time penalties amounting
19 to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor
20 Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination
21 entitles an employee to recover waiting time penalties).

22 **EIGHTH CAUSE OF ACTION**
23 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
24 **[Cal. Labor Code §§ 204, 210]**
On behalf of Plaintiff and the Class

25 108. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
26 in the preceding paragraphs.

27 109. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
28 any employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
2 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
3 payroll if the wages are paid not more than seven calendar days following the close of the payroll
4 period.

5 110. Due to Defendant’s failure to pay Plaintiff and the other Class Members for
6 minimum and overtime wages and meal and rest period premiums owed,² Defendant violated
7 Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll
8 period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist.
9 LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a
10 failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

11 111. Labor Code § 210 provides that “in addition to, an entirely independent and apart
12 from, any other penalty provided in this article, every person who fails to pay the wages of each
13 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
14 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
15 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
16 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
17 faulty compensation policies and practices described in detail above, Plaintiff and the Class are
18 entitled to recover penalties under Labor Code § 210.

19 ///

20 ///

21
22 ² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
25 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
26 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a
27 section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages
28 under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5
(N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor
Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying
defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be
considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7,
2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay
wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme
Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

NINTH CAUSE OF ACTION
FAILURE TO PAY BUSINESS EXPENSES
[Cal. Labor Code § 2802]
On behalf of Plaintiff and the Class

112. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

113. The actionable period for this cause of action is three years prior to the filing of the Complaint through the present, and on-going until the violations are corrected or the Class is certified.

114. Cal. Labor Code §2802 provides that:

(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful...

(c) For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.

115. Thus, employees such as Plaintiff and the Class, are entitled to reimbursement for the expenses they incur during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own, and would be required to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 (“The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee.”) After all, the purpose of 2802 is to “prevent employers from passing along their operating expenses onto their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal. 4th 554, 562.

116. Here, Defendant did not have a reimbursement policy for Plaintiff and the Class for their reasonable and necessary business expenses. Instead, the opposite was true: Such expenses

1 are not waivable. See Labor Code Section 2802. Defendant's contracts with Plaintiff and the Class
2 specifically required Plaintiff and the Class to pay for their own expenses, including personal cell
3 phone and computer usage for work-related functions, while performing their duties. Thus, it is
4 clear that not only did Plaintiff and the Class incur expenses as a result of their employment, but
5 that Defendant had an actual and/or constructive knowledge of those expenses, and anticipating
6 them, informed Plaintiff and the Class that it would not provide any reimbursement. Therefore,
7 Defendant has violated § 2802 with respect to Plaintiff and the Class.

8 **TENTH CAUSE OF ACTION**
9 **UNFAIR COMPETITION LAW VIOLATIONS**
10 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
11 **On Behalf of Plaintiff and the Class**

12 117. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
13 in the preceding paragraphs.

14 118. Section 17200 of the California Business & Professions Code prohibits any
15 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
16 "any person who has suffered injury in fact and has lost money or property" to prosecute a civil
17 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
18 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

19 119. Under section 17208 of the California Business and Professions Code, the statute of
20 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
21 this cause of action is from July 24, 2016 through the present, and on-going until the violations are
22 corrected or the Class is certified.

23 120. Section 90.5(a) of the Labor Code states that it is the public policy of California to
24 enforce vigorously minimum labor standards in order to ensure employees are not required to work
25 under substandard and unlawful conditions, and to protect employers who comply with the law
26 from those who attempt to gain competitive advantage at the expense of their workers by failing to
27 comply with minimum labor standards.

28 121. As a direct and proximate result of Defendant's unlawful business practices,
Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from its

1 unlawful, unfair, and/or fraudulent acts and practices.

2 122. Plaintiff and similarly situated Class Members are entitled to monetary relief
3 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages and
4 overtime, and unpaid meal and rest period premiums, from at least four years prior to the filing of
5 this complaint through to the date of such restitution, at rates specified by law. Defendant should
6 be required to disgorge all the profits and gains it has reaped and restore such profits and gains to
7 Plaintiff and Class Members, from whom they were unlawfully taken.

8 123. Through its actions alleged herein, Defendant has engaged in unfair competition
9 within the meaning of section 17200 of the California Business & Professions Code, because
10 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by
11 wrongfully denying them minimum wages and overtime and wrongfully denying them missed
12 meal and rest period premiums, and therefore was substantially injurious to Plaintiff and the Class
13 Members.

14 124. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
15 the California Business & Professions Code by violating Section 1194 of the California Labor
16 Code, and Section 12 of the IWC Wage Order No. 4.

17 125. Defendant's course of conduct, act and practice in violation of the California laws
18 mentioned above constitute independent violations of sections 17200 et seq. of the California
19 Business and Professions Code.

20 126. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
21 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

22 127. Plaintiff has assumed the responsibility of enforcement of the laws and public
23 policies specified herein by suing on behalf of themselves and other similarly situated Class
24 Members previously or presently employed by Defendant in California. Plaintiff's success in this
25 action will enforce important rights affecting the public interest. Plaintiff will incur a financial
26 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
27 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

28 ///

ELEVENTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN
MISCLASSIFICATION
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff and the PAGA Aggrieved Employees and LWDA

128. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

129. Plaintiff and those members of the class who were employed by Defendant within the last year are, “aggrieved employees” under PAGA as they were employed by Defendant during the applicable statutory period and suffered the Labor Code violations alleged herein; specifically, violations of §§ 201, 202, 203, 204, 210, 221, 222, 223, 226(a) and (e), 226.2, 226.3, 226.7, 226.8, 401-410, 512, 1182.11, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1199.5, 2802, 2750.3 as well as IWC Wage Orders 4-2001. Plaintiff was employed by Defendant during the one year preceding the submission of a PAGA letter to the LDWA on or around July 24, 2020. As such, she seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA.

130. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

131. The aggrieved employees are all individuals who hold or held the title of teacher or in any other similar capacity, and who are or have been classified as independent contractors by Defendant in California during the PAGA Period. These employees were subject to the aforementioned Labor Code violations, during the period of time from one year prior to the submission of Plaintiff’s letter to the LWDA on July 24, 2020 through the present and on-going.

1 132. In addition, as set forth above, Defendant failed to provide Plaintiff and all
2 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
3 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
4 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
5 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
6 each violation in a subsequent citation, for which the employer fails to provide the employee a
7 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

8 133. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section
9 226 claim, Plaintiff and the Aggrieved Employees for the Section 226 claim are entitled to \$250
10 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a
11 violation. See *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675
12 (2018) (finding that Labor Code § 226.3 applies to all violations of Labor Code § 226(a)); see also
13 *Magadia v. Wal- Mart Assocs.*, 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019) (“the Court finds
14 that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate measure of civil penalties
15 under PAGA” for the violation of Labor Code § 226(a).

16 134. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
17 Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing,
18 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; see also *Willner v. Manpower*
19 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all
20 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
21 above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
22 “for the purposes of recovering PAGA penalties, one need only prove a violation of Section
23 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S.
24 Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab.
25 Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

26 135. Plaintiff seeks to recover the PAGA civil penalties through a representative action
27 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
28 Cal.4th 969.

1 136. Pursuant to Labor Code § 2699.3 (a), on July 24, 2020 and April 12, 2021, Plaintiff
2 gave written notice by certified mail to Defendant, and to the Labor and Workforce Development
3 Agency (“LWDA”) of her claims, including the facts and theories supporting all claims outlined in
4 this Complaint. Accordingly, Plaintiff fulfilled all administrative prerequisites to the pursuit of her
5 PAGA claim on behalf of herself and all other current and former aggrieved employees of
6 Defendant.

7 **JURY DEMAND**

8 137. Plaintiff hereby demands trial by jury of her and the Class’s claims against
9 Defendant, except for her PAGA and UCL claims which are properly tried to the Court.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff, on behalf of herself and the members of the Class, prays for judgment
12 against Defendant as follows:

13 1. An Order that this action may proceed and be maintained as a class action;

14 2. On the First Cause of Action:

15 a. That the Court find that Defendant violated California Labor Code §§
16 226.8(a)(1) by willfully misclassifying Plaintiff and Aggrieved Employees as independent
17 contractors.

18 b. That Plaintiff and other Aggrieved Employees be awarded penalties, at a
19 minimum, as specified in Labor Code §226.8(b).

20 c. That the Court find, additionally, the Defendant engaged in a pattern or
21 practice of willful misclassification of Plaintiff and the Aggrieved Employees.

22 d. That Plaintiff and other Aggrieved Employees be awarded penalties, upon a
23 finding of a pattern or practice, as specified in Labor Code § 226.8(c) in lieu of the penalties in
24 226.8(b).

25 e. That the Court award attorneys’ fees and costs pursuant to Labor Code §
26 2699(g)(1).

27 3. On the Second Cause of Action:

28 a. A Declaratory judgment that Defendant has violated California Labor Code

1 sections 226.2 and 1194;

2 b. An award to Plaintiff and the other members of the Class in the amount of
3 their unpaid minimum wages.

4 4. On the Third Cause of Action:

5 a. A Declaratory judgment that Defendant has violated California Labor Code
6 § 510;

7 b. An award to Plaintiff and the other members of the Class in the amount of
8 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages
9 during the Class Period;

10 5. On the Fourth Cause of Action:

11 a. A declaratory judgment that Defendant has violated California Labor Code
12 § 226.7, and Section 12 of IWC Wage Order No. 4-2001;

13 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
14 Members for an hour of pay for each day that a compliant rest period was not provided during the
15 Class Period;

16 6. On the Fifth Cause of Action:

17 c. A declaratory judgment that Defendant has violated California Labor Code
18 sections 226.7, 512, and Section 11 of IWC Wage Order No. 4-2001;

19 d. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
20 Members for an hour of pay for each day that a compliant meal period was not provided during the
21 Class Period;

22 7. On the Sixth Cause of Action:

23 a. A declaratory judgment that Defendant violated California Labor Code
24 §226(a) by issuing inaccurate and/or incomplete wage statements that failed to include total hours
25 worked and all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate to Plaintiff and the wage statement and penalty
27 subclass members;

28 b. An award to Plaintiff and Class Members of \$50 for each initial pay period

1 in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a
2 violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as
3 an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

4 8. On the Seventh Cause of Action:

5 a. A declaratory judgment that Defendant violated California Labor Code
6 §§201 through 203;

7 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
8 the waiting time penalty subclass members for waiting time penalties in the amount of 30 days'
9 wages per waiting time penalty subclass Class Member.

10 9. On the Eighth Cause of Action:

11 a. A declaratory judgment that Defendant violated California Labor Code §§
12 204 and 210;

13 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Class
14 for penalties pursuant to Labor Code § 210.

15 10. On the Ninth Cause of Action:

16 a. A declaratory judgment that Defendant violated California Labor Code
17 section 2802;

18 b. Pursuant to Labor Code section 2802, an award to Plaintiff and the Class of
19 all unreimbursed business expenses, and interest thereon, that they are owed pursuant to Labor
20 Code section 2802.

21 11. On the Tenth Cause of Action:

22 a. That the Court find and declare that Defendants have violated the UCL and
23 committed unfair and unlawful business practices by misclassifying Plaintiff and Class Members,
24 by failing to pay minimum wages and overtime and by failing to pay missed meal and rest break
25 premiums;

26 b. Restitution, including, but not limited to, the relief permitted by sections
27 1194, 510, 226.7 of the California Labor Code (i.e., pay as specified for unpaid minimum wages
28 and overtime and meal and rest period premiums to Plaintiff and the members of the Class during

1 the Class Period);

2 12. On the Eleventh Cause of Action:

3 a. A civil penalty against Defendant in the amount of \$100 for the initial
4 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
5 California Labor Code for Plaintiff and for member of the Wage Statement and PAGA Penalty
6 Subclass during all of the pay periods in the one year preceding the filing of this Complaint
7 through the present and on-going until the violations are corrected or this subclass is certified;

8 b. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the
9 Section 226 claim, Plaintiff is entitled to \$250 for each initial pay period with a violation and
10 \$1,000 for each subsequent pay period with a violation. See *Raines v. Coastal Pacific Food*
11 *Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675 (2018) (finding that Labor Code § 226.3 applies
12 to all violations of Labor Code § 226(a)); see also *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d.
13 1058, 1109 (N.D. Cal. 2019) (“the Court finds that Cal. Lab. Code § 226.3 penalties are applicable
14 as the appropriate measure of civil penalties under PAGA” for the violation of Labor Code §
15 226(a).

16 c. An award of reasonable attorney’s fees against Defendant as specified in
17 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
18 with the PAGA claims;

19 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
20 connection with Plaintiff’s and Class Members’ PAGA claim against Defendant, as provided for in
21 Labor Code § 2699(g)(1);

22 13. All other relief as this Court deems proper.

23 Dated: May 19, 2021

Respectfully,

24 ACKERMANN & TILAJEF, P.C.
25 EMPLOYMENT RIGHTS LAW GROUP, APC

26 By: _____

Craig Ackermann, Esq.

Amir Seyedfarshi, Esq.

27 *Counsel for Plaintiff, the Class, and the*
28 *Aggrieved Employees*