

1 Bevin Allen Pike (SBN 221936)
2 Bevin.Pike@capstonelawyers.com
3 Orlando Villalba (SBN 232165)
4 Orlando.Villalba@capstonelawyers.com
5 Joseph Hakakian (SBN 323011)
6 Joseph.Hakakian@capstonelawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

12 Attorneys for Plaintiffs Destiny Anderson
13 and Nohemi Delgado

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES

16 DESTINY ANDERSON and NOHEMI
17 DELGADO, individually, and on behalf of
18 other members of the general public
19 similarly situated,

20 Plaintiffs,

21 vs.

22 LOS ANGELES UNIFIED SCHOOL
23 DISTRICT; and DOES 1 through 10,
24 inclusive,

25 Defendants.

Case No.:

20STCV36916

**CLASS ACTION COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698,
ET SEQ.**

- (1) Violation of California Labor Code
§§ 1182.12, 1194, 1197, 1197.1, and 1198
(Unpaid Minimum Wages);
(2) Violation of California Labor Code § 2802
(Unreimbursed Business Expenses); and
(3) Civil Penalties for Violations of California
Labor Code, Pursuant to PAGA, §§ 2698,
et seq.

Jury Trial Demanded

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 28 2020

Sherri K. Carter, Esq., Deputy Clerk of Court
By [Signature], Deputy
Steven Drew

BY FAX

1 Plaintiffs Destiny Anderson and Nohemi Delgado, individually and on behalf of all
2 other members of the public similarly situated, and as aggrieved employees and on behalf of
3 all other aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiffs, the State of California, and
8 other current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid substitute employees and received at least one wage statement and against whom
10 one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or
11 any provision regulating hours and days of work in the applicable Industrial Welfare
12 Commission (“IWC”) Wage Order were committed, as set forth in this complaint. The
13 monetary damages, penalties, and restitution sought by Plaintiffs exceed the minimal
14 jurisdiction limits of the Superior Court and will be established according to proof at trial.
15 This Court has jurisdiction over this action pursuant to the California Constitution, Article VI,
16 section 10. The statutes under which this action is brought do not specify any other basis for
17 jurisdiction. Plaintiffs’ share of damages, penalties, and other relief sought in this action does
18 not exceed \$75,000.

19 2. This Court has jurisdiction over Defendants because Defendants are either
20 citizens of California, have sufficient minimum contacts in California, or otherwise
21 intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play
23 and substantial justice.

24 3. Venue is proper in this Court because Defendants employ persons in this
25 county, and employed Plaintiffs this county, and thus a substantial portion of the transactions
26 and occurrences related to this action occurred in this county.

27 ///

28 ///

THE PARTIES

4. Plaintiff Destiny Anderson was employed by Defendants as an hourly paid, non-exempt substitute employee from approximately August 2017 to March 2020. During her employment, Plaintiff Anderson worked for Defendants at various schools within the school district, including, but not limited to, Halldale Elementary School (Torrance), 186th Street Elementary School (Gardena), West Athens Elementary School (Los Angeles), 97th Street Early Education Center (Los Angeles), Lenicia B. Weemes Elementary School (Los Angeles), Normandie Avenue Elementary School (Los Angeles), 156th Elementary (Gardena), and Gulf Avenue Elementary (Wilmington). Plaintiff Anderson typically worked six (6) to ten (10) hours per day, five (5) days per week, and approximately 30-50 hours or more per week. When her employment ended, Plaintiff Anderson was compensated approximately \$17.84 per hour. Plaintiff Anderson's primary job duties included, without limitation, assisting classroom teachers with monitoring and supervising students, including developmentally disabled and special needs students; assisting teachers in implementing classroom curriculum; lifting students in and out of holding or locomotive devices; assisting students with toileting and changing diapers; assisting students with mobility and mobility equipment; reading to students; and assisting teachers with behavioral corrections.

5. Plaintiff Nohemi Delgado was employed by Defendants as an hourly paid, non-exempt substitute employee from approximately March 2016 to March 2020. During her employment, Plaintiff Delgado worked for Defendants at two schools within the school district: Fishburn Avenue Elementary in Maywood, California and Fourth Street Elementary School in Los Angeles, California. Plaintiff Delgado typically worked six (6) hours or more per day, five (5) days per week, and approximately 30 hours or more per week. When her employment ended, Plaintiff Delgado was compensated approximately \$17.84 per hour. Plaintiff Delgado's primary job duties included, without limitation, assisting classroom teachers with monitoring and supervising students, including developmentally disabled and special needs students; assisting teachers in implementing classroom curriculum; lifting students in and out of holding or locomotive devices; assisting students with toileting and

1 changing diapers; assisting students with mobility and mobility equipment; reading to
2 students; and assisting teachers with behavioral corrections.

3 6. LOS ANGELES UNIFIED SCHOOL DISTRICT was and is, upon information
4 and belief, a public school district, and at all times hereinafter mentioned, an employer whose
5 employees are engaged throughout this county, the State of California, or the various states of
6 the United States of America.

7 7. Plaintiffs are unaware of the true names or capacities of the Defendants sued
8 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
9 amend the complaint and serve such fictitiously named Defendants once their names and
10 capacities become known.

11 8. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
12 were affiliates, subsidiaries, and/or alter egos of LOS ANGELES UNIFIED SCHOOL
13 DISTRICT at all relevant times.

14 9. Plaintiffs are informed and believe, and thereon allege, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, LOS ANGELES
16 UNIFIED SCHOOL DISTRICT and/or DOES 1 through 10 (collectively, “Defendants” or
17 “LAUSD”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
18 in concert with, each of the other co-Defendants and was acting within the course and scope of
19 such agency, employment, joint venture, or concerted activity with legal authority to act on
20 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
21 the official policy of Defendants.

22 10. At all relevant times, Defendants, and each of them, ratified each and every act
23 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
24 and abetted the acts and omissions of each and all the other Defendants in proximately causing
25 the damages herein alleged.

26 11. Plaintiffs are informed and believe, and thereon allege, that each of said
27 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
28 omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

12. Defendants are a public school district located and headquartered in Los Angeles County. Defendants operate the largest public school system in the State of California, and the second largest public school system in the United States. Defendants are the second largest employer in the County of Los Angeles, employing approximately 66,523 employees for the 2019-2020 school year.¹ Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their headquarters in Los Angeles, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including standardized scheduling and timekeeping practices and procedures, to employees throughout California.

13. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the administrative level and implemented them district-wide, regardless of their employees’ assigned locations or positions.

14. Upon information and belief, Defendants maintain a centralized Payroll department at their headquarters in Los Angeles, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

15. At all relevant times, Defendants maintained and implemented uniform training requirements for all substitute employees in California, including Plaintiffs and class

¹See Los Angeles Unified: Fingertip Facts 2019-2020, <https://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=52741&dataid=89340&FileName=Fingertip%20Facts%202019-2020.pdfF.pdf> (last accessed Sept. 14, 2020)

1 members, regardless of the location of the school at which they worked. A substantial portion
2 of Defendants' mandatory training was to be completed remotely via web-based online
3 training modules, twice per year. Defendants' mandatory online training modules included,
4 without limitation, the following training programs/courses: Disability Awareness and ADA
5 Compliance Training; Suicide Prevention and Awareness Training; 2018/2019 Fall Child
6 Abuse Awareness Training; Protective Factors and Psychological First Aid for Students; and
7 other courses.

8 16. Defendants' online training requires substitute employees to utilize their own
9 desktop or laptop computers at home to complete the online training. Defendants instruct
10 substitute employees to enter their user-specific login credentials at a dedicated website to
11 access the online training modules. Defendants notify substitute employees of mandatory
12 training by sending out emails to all substitute employees, automatically enrolling them in
13 mandatory online training and assigning various deadlines by which training must be
14 completed. Defendants' emails instruct substitute teachers to log in to the My Professional
15 Learning Network ("MyPLN") and provide a hyperlink within the email to access and
16 complete the mandated training. The MyPLN website is and was accessible only by desktop
17 or laptop computer.

18 17. Plaintiffs and class members followed Defendants' instructions and completed
19 the online training modules outside of their substitute teaching hours. Even though
20 Defendants required that Plaintiffs and class members complete the mandatory training, they
21 did not provide Plaintiffs and class members with any method for recording the hours they
22 spent completing the training and did not pay them for this time.

23 18. Defendants continue to employ non-exempt or hourly paid substitute
24 employees in California.

25 19. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
27 and advisors knowledgeable about California labor and wage law, employment and personnel
28 practices, and about the requirements of California law.

1 20. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
2 members were not paid for all hours worked because all hours worked were not recorded.

3 21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to receive at least
5 minimum wages for compensation and that they were not receiving at least minimum wages
6 for work that was required to be done off-the-clock. In violation of the California Labor
7 Code, Plaintiffs and class members were not paid at least minimum wages for work done off-
8 the-clock.

9 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and class members were entitled to receive full
11 reimbursement for all business-related expenses and costs they incurred during the course and
12 scope of their employment and that they did not receive full reimbursement of applicable
13 business-related expenses and costs incurred.

14 **PAGA REPRESENTATIVE ALLEGATIONS**

15 23. At all times herein set forth, PAGA provides that any provision of law under
16 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
17 assessed and collected by the LWDA for violations of the California Labor Code and
18 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
19 civil action brought on behalf of themselves and other current or former employees pursuant
20 to procedures outlined in California Labor Code section 2699.3.

21 24. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
22 person who was employed by the alleged violator and against whom one or more of the
23 alleged violations was committed.”

24 25. Plaintiffs and other current and former employees of Defendants are “aggrieved
25 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
26 or former employees and one or more of the alleged violations were committed against them.

27 26. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
28 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the

1 following requirements have been met:

- 2 (a) The aggrieved employee or representative shall give written notice by
3 online filing with the LWDA and by certified mail to the employer of
4 the specific provisions of the California Labor Code alleged to have
5 been violated, including the facts and theories to support the alleged
6 violation.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to
8 2699.3(a) and any employer response to that notice shall be
9 accompanied by a filing fee of seventy-five dollars (\$75).
- 10 (c) The LWDA shall notify the employer and the aggrieved employee or
11 representative by certified mail that it does not intend to investigate the
12 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
13 the postmark date of the aggrieved employee's notice. Upon receipt of
14 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
15 (65) calendar days of the postmark date of the aggrieved employee's
16 notice, the aggrieved employee may commence a civil action pursuant
17 to California Labor Code section 2699 to recover civil penalties.

18 27. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
19 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any
20 provision other than those listed in Section 2699.5 after the following requirements have been
21 met:

- 22 (a) The aggrieved employee or representative shall give written notice by
23 online filing with the LWDA and by certified mail to the employer of
24 the specific provisions of the California Labor Code alleged to have
25 been violated (other than those listed in Section 2699.5), including the
26 facts and theories to support the alleged violation.
- 27 (b) An aggrieved employee's notice filed with the LWDA pursuant to
28 2699.3(c) and any employer response to that notice shall be

1 accompanied by a filing fee of seventy-five dollars (\$75).

2 (c) The employer may cure the alleged violation within thirty-three (33)
3 calendar days of the postmark date of the notice sent by the aggrieved
4 employee or representative. The employer shall give written notice
5 within that period of time by certified mail to the aggrieved employee or
6 representative and by online filing with the LWDA if the alleged
7 violation is cured, including a description of actions taken, and no civil
8 action pursuant to Section 2699 may commence. If the alleged violation
9 is not cured within the 33-day period, the aggrieved employee may
10 commence a civil action pursuant to Section 2699.

11 28. On July 2, 2020, Plaintiff Anderson provided written notice by online filing to
12 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
13 Labor Code alleged to have been violated, including facts and theories to support the alleged
14 violations, in accordance with California Labor Code section 2699.3. Plaintiff Anderson's
15 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
16 The LWDA PAGA Administrator confirmed receipt of Plaintiff Anderson's written notice and
17 assigned Plaintiff Anderson PAGA Case Number LWDA-CM-795472-20. A true and correct
18 copy of Plaintiff Anderson's written notice to the LWDA and Defendants is attached hereto as
19 "Exhibit 1."

20 29. On July 2, 2020, Plaintiff Delgado provided written notice by online filing to
21 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
22 Labor Code alleged to have been violated, including facts and theories to support the alleged
23 violations, in accordance with California Labor Code section 2699.3. Plaintiff Delgado's
24 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
25 The LWDA PAGA Administrator confirmed receipt of Plaintiff Delgado's written notice and
26 assigned Plaintiff Delgado PAGA Case Number LWDA-CM-795473-20. A true and correct
27 copy of Plaintiff Delgado's written notice to the LWDA and Defendants is attached hereto as
28 "Exhibit 2."

1 30. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
2 sent the notices described above to the LWDA, and the LWDA has not responded that it
3 intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

4 31. Thus, Plaintiffs have satisfied the administrative prerequisites under California
5 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

7 32. Defendants, at all times relevant to this complaint, were employers or persons
8 acting on behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees'
9 rights by violating various sections of the California Labor Code as set forth above.

10 33. As set forth below, Defendants have violated numerous provisions of both the
11 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
12 Order.

13 34. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
14 2699.3(a), 2699.3(c), and 2699.5, Plaintiffs, acting in the public interest as private attorneys
15 general, seek assessment and collection of civil penalties for themselves, all other aggrieved
16 employees, and the State of California against Defendants for violations of California Labor
17 Code sections 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

18 **CLASS ACTION ALLEGATIONS**

19 35. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
20 all other persons similarly situated, and thus seek class certification under California Code of
21 Civil Procedure section 382.

22 36. All claims alleged herein arise under California law for which Plaintiffs seek
23 relief authorized by California law.

24 37. Plaintiffs' proposed class consists of and is defined as follows:

25 All persons who worked for Defendants as non-exempt, hourly
26 paid substitute employees in California, within three years prior
27 to the filing of the initial complaint until the date of trial
 ("Class").

28 38. Members of the Class are referred to herein as "class members."

1 39. Plaintiffs reserve the right to redefine the Class and to add subclasses as
2 appropriate based on further investigation, discovery, and specific theories of liability.

3 40. There are common questions of law and fact as to class members that
4 predominate over questions affecting only individual members, including, but not limited to:

- 5 (a) Whether Defendants failed to pay Plaintiffs and class members at least
6 minimum wages for all hours worked;
- 7 (b) Whether Defendants failed to reimburse Plaintiffs and class members
8 for necessary and required business-related expenditures and/or losses
9 incurred by them in the scope of their employment; and
- 10 (c) The appropriate amount of damages, restitution, or monetary penalties
11 resulting from Defendants' violations of California law.

12 41. There is a well-defined community of interest in the litigation and the class
13 members are readily ascertainable:

- 14 (a) Numerosity: The class members are so numerous that joinder of all
15 members would be unfeasible and impractical. The membership of the
16 entire class is unknown to Plaintiffs at this time; however, the class is
17 estimated to be greater than one hundred (100) individuals and the
18 identity of such membership is readily ascertainable by inspection of
19 Defendants' employment records.
- 20 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
21 protect the interests of each class member with whom they have a well-
22 defined community of interest, and Plaintiffs' claims (or defenses, if
23 any) are typical of all class members as demonstrated herein.
- 24 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
25 protect the interests of each class member with whom they have a well-
26 defined community of interest and typicality of claims, as demonstrated
27 herein. Plaintiffs acknowledge that they have an obligation to make
28 known to the Court any relationship, conflicts or differences with any

1 class member. Plaintiffs' attorneys, the proposed class counsel, are
2 versed in the rules governing class action discovery, certification, and
3 settlement. Plaintiffs have incurred, and throughout the duration of this
4 action, will continue to incur costs and attorneys' fees that have been,
5 are, and will be necessarily expended for the prosecution of this action
6 for the substantial benefit of each class member.

7 (d) Superiority: The nature of this action makes the use of class action
8 adjudication superior to other methods. A class action will achieve
9 economies of time, effort, and expense as compared with separate
10 lawsuits, and will avoid inconsistent outcomes because the same issues
11 can be adjudicated in the same manner and at the same time for the
12 entire class.

13 (e) Public Policy Considerations: Employers in the State of California
14 violate employment and labor laws every day. Current employees are
15 often afraid to assert their rights out of fear of direct or indirect
16 retaliation. Former employees are fearful of bringing actions because
17 they believe their former employers might damage their future
18 endeavors through negative references and/or other means. Class
19 actions provide the class members who are not named in the complaint
20 with a type of anonymity that allows for the vindication of their rights
21 while simultaneously protecting their privacy.

22 **FIRST CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 24 **Minimum Wages** 25 **(Against all Defendants)**

26 42. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
27 and every allegation set forth above.

28 43. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,

1 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
2 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
3 fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as “the time
4 during which an employee is subject to the control of an employer, and includes all the time
5 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
6 Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

7 44. As set forth above, Defendants implemented district-wide mandatory training
8 requirements for all substitute employees, including Plaintiffs and class members, but did not
9 compensate them for the time spent completing the required training. As also stated,
10 Defendants failed to implement any mechanism or procedure for Plaintiffs and class members
11 to record their hours spent completing mandatory online training modules. At all times,
12 Defendants controlled selecting the courses and training and setting the deadlines by which
13 training had to be completed by Plaintiffs and class members. During the relevant period,
14 Plaintiffs and class members spent approximately one (1) to two (2) hours completing each
15 required online training module. However, Defendants did not compensate Plaintiffs and
16 class members for the time they spent completing the required training.

17 45. In addition, Defendants had a district-wide practice and/or policy of requiring
18 Plaintiff Anderson and class members to perform preparation work before class and prepare
19 post-class reports or other tasks, but failed to compensate Plaintiff Anderson and class
20 members for this time. Instead, Defendants only compensated Plaintiff Anderson and class
21 members for their scheduled shift times during which class was in session. For example,
22 Plaintiff Anderson was required to spend up to three (3) hours preparing for a class while off-
23 the-clock, and at times was required to stay after class for up to two (2) hours to continue
24 assisting with curriculum preparation, decorating the classroom, and event preparation.
25 Defendants also required Plaintiff Anderson and class members to report early before class
26 (and before their scheduled shifts) to ride buses with special needs students who needed one-
27 on-one supervision, but did not compensate them for this additional time. Defendants do not
28 have any mechanism or procedure in place to allow Plaintiff Anderson and class members to

1 record additional time spent performing work before or after classes, and, instead, simply pay
2 them for the set amount of hours while students are in the classroom, regardless of their actual
3 hours worked.

4 46. Further, Defendants had a district-wide policy and/or practice of requiring
5 Plaintiff Anderson and class members to attend mandatory after-school school faculty
6 meetings but did not compensate Plaintiff Anderson and class members for this time. These
7 after-school faculty meetings could last up to two (2) hours, and Defendants did not
8 compensate Plaintiff Anderson and class members for any of this time.

9 47. As a result, Defendants have regularly failed to pay at least minimum wages for
10 those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
11 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs
12 and class members are entitled to recover liquidated damages in an amount equal to the wages
13 unlawfully unpaid and interest thereon.

14 **SECOND CAUSE OF ACTION**

15 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

16 **(Against all Defendants)**

17 48. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
18 and every allegation set forth above.

19 49. At all times herein set forth, California Labor Code section 2802 provides that
20 an employer must reimburse employees for all necessary expenditures and losses incurred by
21 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
22 to prevent employers from passing off their cost of doing business and operating expenses on
23 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
24 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: “[w]hen tools or
25 equipment are required by the employer or are necessary to the performance of a job, such
26 tools and equipment shall be provided and maintained by the employer, except that an
27 employee whose wages are at least two (2) times the minimum wage provided herein may be
28 required to provide and maintain hand tools and equipment customarily required by the trade

1 or craft.”

2 50. During the relevant time period, Defendants had a company-wide policy and/or
3 practice of requiring Plaintiffs and class members to use their own internet service providers
4 to complete online training modules from home, but did not reimburse them for their internet
5 service expenses. Although Defendants required Plaintiffs and class members to utilize their
6 own internet service providers to complete necessary work duties, Defendants failed to
7 reimburse them for these expenses and instead passed these operating costs off onto Plaintiffs
8 and class members.

9 51. Defendants’ company-wide policy and/or practice of passing on their operating
10 costs to Plaintiffs and class members violates California Labor Code section 2802.
11 Defendants have intentionally and willfully failed to reimburse Plaintiffs and other class
12 members for necessary business-related expenses and costs.

13 52. Plaintiffs and class members are entitled to recover from Defendants their
14 business-related expenses incurred during the course and scope of their employment, plus
15 interest.

16 **THIRD CAUSE OF ACTION**

17 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

18 **(Against all Defendants)**

19 53. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
20 and every allegation set forth above.

21 54. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
22 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
23 section 2699.5. Section 2699.5 enumerates Labor Code sections 1194, 1197, 1197.1, 1198,
24 and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to
25 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
26 including section 1182.12.

27 55. Defendants’ conduct, as alleged herein, violates numerous sections of the
28 California Labor Code, including, but not limited to, the following:

- 1 (a) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
2 and the applicable IWC wage order for Defendants' failure to
3 compensate Plaintiffs and other aggrieved employees with at least
4 minimum wages for all hours worked, as alleged herein; and
5 (b) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
6 and other aggrieved employees for all business expenses necessarily
7 incurred, as alleged herein.

8 56. Plaintiffs and other aggrieved employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **REQUEST FOR JURY TRIAL**

11 Plaintiffs request a trial by jury.

12 **PRAYER FOR RELIEF**

13 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment
14 against Defendants, jointly and severally, as follows:

15 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
16 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs
17 reserve the right to amend their prayer for relief to seek a different amount.

18 **Class Certification**

- 19 2. That this case be certified as a class action;
20 3. That Plaintiffs be appointed as the representatives of the Class;
21 4. That counsel for Plaintiffs be appointed as class counsel.

22 **As to the First Cause of Action**

23 5. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
25 minimum wages to Plaintiffs and class members;

26 6. For general unpaid wages and such general and special damages as may be
27 appropriate;

28 7. For pre-judgment interest on any unpaid compensation from the date such

1 amounts were due, or as otherwise provided by law;

2 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
3 California Labor Code section 1194(a);

4 9. For liquidated damages pursuant to California Labor Code section 1194.2; and

5 10. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Second Cause of Action**

8 11. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
10 related expenses and costs incurred by Plaintiffs and class members;

11 12. For unpaid business-related expenses and such general and special damages as
12 may be appropriate;

13 13. For pre-judgment interest on any unpaid business-related expenses from the
14 date such amounts were due, or as otherwise provided by law;

15 14. For all actual, consequential, and incidental losses and damages, according to
16 proof;

17 15. For attorneys' fees and costs pursuant to California Labor Code section
18 2802(c), or as otherwise provided by law; and

19 16. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Third Cause of Action**

22 17. That the Court declare, adjudge and decree that Defendants violated the
23 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:
24 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all
25 hours worked); and 2802 (by failing to reimburse business expenses);

26 18. For civil penalties pursuant to California Labor Code sections 1197.1, and/or
27 2699(a), (f) and (g), for violations of California Labor Code sections 1182.12, 1194, 1197,
28 1197.1, 1198, and 2802;

1 19. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
3 Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

4 20. For pre-judgment and post-judgment interest as provided by law; and

5 21. For such other and further relief as the Court may deem equitable and
6 appropriate.

7
8 Dated: September 28, 2020

Respectfully submitted,

9 Capstone Law APC

10
11 By: 

12 Bevin Allen Pike
13 Orlando Villalba
14 Joseph Hakakian

15 Attorneys for Plaintiffs Destiny Anderson
16 and Nohemi Delgado
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “1”

JAMIE R. GREENE
310.556.4165 Direct
Jamie.Greene@capstonelawyers.com

July 2, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Destiny Anderson v. Los Angeles Unified School District*

Dear PAGA Administrator:

This office represents Destiny Anderson in connection with her claims under the California Labor Code. Ms. Anderson was an employee of LOS ANGELES UNIFIED SCHOOL DISTRICT (“LAUSD”).

The employer may be contacted directly at the address below:

LOS ANGELES UNIFIED SCHOOL DISTRICT
333 S. BEAUDRY AVENUE, 24TH FLR
LOS ANGELES, CA 90017

Ms. Anderson intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Anderson seeks relief for herself, for the State of California, and for other persons who are or were employed by LAUSD in California as a non-exempt, hourly paid substitute teacher and who received at least one wage statement (“aggrieved employees”). This letter is sent pursuant to California Labor Code section 2699.3.

LAUSD employed Ms. Anderson as a non-exempt, hourly paid substitute teacher from approximately August 2017 to March 2020. During her employment, Ms. Anderson worked for LAUSD at various schools within the school district, including but not limited to Halldale Elementary School (Torrance), 186th Street Elementary School (Gardena), West Athens Elementary School (Los Angeles), 97th Street Early Education Center (Los Angeles), Lenicia B. Weemes Elementary School (Los Angeles), Normandie Avenue Elementary School (Los Angeles), 156th Elementary (Gardena), and Gulf Avenue Elementary (Wilmington). Ms. Anderson typically worked six (6) to ten (10) hours per day, five (5) days per week, approximately 30-50 hours or more per

week. When her employment ended, Ms. Anderson was compensated approximately \$17.84 per hour.

Ms. Anderson's primary job duties included, without limitation, assisting classroom teachers with monitoring and supervising students, including developmentally disabled and special needs students, assisting teachers in implementing classroom curriculum, lifting students in and out of holding or locomotive devices, assisting students with toileting and changing diapers, assisting students with mobility and mobility equipment, reading to students, and assisting teachers with behavioral corrections.

LAUSD has committed one or more of the following Labor Code violations against Ms. Anderson, the facts and theories of which follow, making her an "aggrieved employee" under California Labor Code section 2699(c):¹

LAUSD's District-Wide and Uniform Timekeeping Practices and Training Requirements

LAUSD is a public school district located and headquartered in Los Angeles County. LAUSD operates the largest public school system in the State of California, and the second largest public school system in the United States. LAUSD is the second largest employer in the County of Los Angeles, employing approximately 66,523 employees for the 2019-2020 school year.² Upon information and belief, LAUSD maintains a single, centralized Human Resources (HR) department at its headquarters in Los Angeles, California, for all non-exempt, hourly paid employees working for LAUSD in California, including Ms. Anderson and other aggrieved employees. At all relevant times, LAUSD issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Anderson and other aggrieved employees, regardless of their school location.

Upon information and belief, LAUSD maintains a centralized Payroll department at its headquarters in Los Angeles. The Payroll department processes payroll for all non-exempt, hourly paid employees working for LAUSD in California, including Ms. Anderson and other aggrieved employees. Further, LAUSD issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Anderson and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In short, LAUSD utilized the same methods and formulas when calculating wages due to Ms. Anderson and other aggrieved employees in California.

At all relevant times, LAUSD maintained and implemented uniform training requirements for all substitute teachers in California, including Ms. Anderson and other aggrieved employees, regardless

¹ These facts, theories, and claims are based on Ms. Anderson's experience and counsel's review of those records currently available relating to Ms. Anderson's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims of which the aggrieved employee was not initially aware, either because the aggrieved employee was not aware of the law's requirements, or because the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations. Ms. Anderson reserves the right to supplement this letter with additional facts, theories, and claims of which she becomes aware after the submission of this letter.

²See

<https://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=52741&dataid=89340&FileName=Fingertip%20Facts%202019-2020.pdfF.pdf> (site last visited June 18, 2020)

of the location of the school at which they worked. A substantial portion of LAUSD’s mandatory training was to be completed remotely via web-based online training modules, to be completed twice per year. LAUSD’s mandatory online training modules included, without limitation, the following training programs/courses: Disability Awareness and ADA Compliance Training; Suicide Prevention and Awareness Training; 2018/2019 Fall Child Abuse Awareness Training; Protective Factors and Psychological First Aid for Students; and other courses.

LAUSD’s online training requires substitute teachers to utilize their own desktop or laptop computers at home to complete the online training. LAUSD instructs substitute teachers to enter their user-specific login credentials at a dedicated website to access the online training modules. LAUSD notifies substitute teachers of mandatory training by sending out emails to all substitute teachers automatically enrolling them in mandatory online training and assigning various deadlines by which training must be completed. LAUSD’s emails instruct substitute teachers to log in to the My Professional Learning Network (“MyPLN”) and provides a hyperlink within the email to access and complete the mandated training. (See exemplar email from LAUSD attached hereto as Exhibit “A.”) The MyPLN website is and was accessible only by desktop or laptop computer. Below is a screenshot of LAUSD’s MyPLN website³:



Ms. Anderson and other aggrieved employees followed LAUSD’s instructions and completed the online training modules outside of their substitute teaching hours. Even though LAUSD required that Ms. Anderson and other aggrieved employees complete the mandatory training, it did not provide Ms. Anderson and other aggrieved employees with any method for recording the hours they spent completing the training and did not pay them for this time.

³ https://achieve.lausd.net/cms/lib/CA01000043/Centricity/domain/644/___mypln_login/ (last visited June 24, 2020)

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Wage Order No. 4 defines “compensable work time” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

As set forth above, LAUSD implemented district-wide mandatory training requirements for all substitute teachers, including Ms. Anderson and other aggrieved employees, but did not compensate them for the time spent completing the required training. As also stated, LAUSD failed to implement any mechanism or procedure for Ms. Anderson and other aggrieved employees to record their hours spent completing mandatory online training modules. At all times, LAUSD controlled selecting the courses and training and setting the deadlines by which training had to be completed by Ms. Anderson and other aggrieved employees. During the relevant period, Ms. Anderson spent approximately one (1) to two (2) hours completing each required online training module. Similarly, other aggrieved employees spent hours completing LAUSD’s mandatory online training modules. However, LAUSD did not compensate Ms. Anderson and other aggrieved employees for the time they spent completing the required training.

In addition, LAUSD had a district-wide practice and/or policy of requiring Ms. Anderson and other aggrieved employees to perform preparation work before class and prepare post-class reports or other tasks, but failed to compensate Ms. Anderson and other aggrieved employees for this time. Instead, LAUSD only compensated Ms. Anderson and other aggrieved employees for their scheduled shift times during which class was in session. For example, Ms. Anderson was required to spend up to three (3) hours preparing for a class while off-the-clock, and at times was required to stay after class for up to two (2) hours to continue assisting with curriculum preparation, decorating the classroom, and event preparation. LAUSD also required Ms. Anderson and other aggrieved employees to report early before class (and before their scheduled shifts) to ride buses with special needs students who needed one-on-one supervision but did not compensate them for this additional time. LAUSD does not have any mechanism or procedure in place to allow Ms. Anderson and other aggrieved employees to record additional time spent performing work before or after classes, and instead simply pays them for the set amount of hours while students are in the classroom, regardless of their actual hours worked.

Further, LAUSD had a district-wide policy and/or practice of requiring Ms. Anderson and other aggrieved employees to attend mandatory after-school school faculty meetings but did not compensate Ms. Anderson and other aggrieved employees for this time. These after-school faculty meetings could last up to two (2) hours, and LAUSD did not compensate Ms. Anderson and other aggrieved employees for any of this time.

As a result, LAUSD regularly has failed to pay at least minimum wages to Ms. Anderson and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Anderson and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, LAUSD had a company-wide policy and/or practice of requiring Ms. Anderson and other aggrieved employees to use their own internet service providers to complete online training modules from home, but did not reimburse them for their internet service expenses. Although LAUSD required Ms. Anderson and other aggrieved employees to utilize their own internet service providers to complete necessary work duties, LAUSD failed to reimburse them for these expenses and instead passed these operating costs off onto Ms. Anderson and other aggrieved employees.

Thus, LAUSD had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Anderson and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Ms. Anderson, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against LAUSD for violations of California Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Anderson seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Anderson’s reasonable attempt to settle her dispute with LAUSD prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform LAUSD of Ms. Anderson’s aforementioned grievances and the proposed remedies as detailed below, while affording LAUSD a reasonable opportunity to satisfy Ms. Anderson’s demands.

Demand is hereby made that LAUSD shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

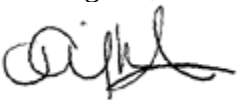
1. LAUSD shall pay Ms. Anderson and all other aggrieved employees employed by LAUSD at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations;

2. LAUSD shall comply with all California labor laws and ensure that Ms. Anderson and/or other aggrieved employees are paid minimum wages for all hours worked;
3. LAUSD shall conduct a survey or interview all current and former aggrieved employees in California who worked for LAUSD in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of employees who were required to pay for internet service expenses to complete requisite online training, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days;
4. LAUSD shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for LAUSD's benefit, including, but not limited to, costs of, internet service expenses, as required by Labor Code section 2802;
5. LAUSD shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages; and
6. LAUSD shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 1197.1, 1199, and 2699, and Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me:

Jamie R. Greene
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Jamie R. Greene

Copy: LOS ANGELES UNIFIED SCHOOL DISTRICT (via U.S. Certified Mail)

Exhibit A

Jamie Greene

From: MyPLN@lausd.net <MyPLN@lausd.net>

Sent: Thursday, July 18, 2019 2:02:26 PM

To:

Subject: Action Required: You have been registered for Suicide Prevention and Awareness Training 2019-20



My Professional Learning Network



Dear _____

You have been enrolled in the following training item:

Suicide Prevention and Awareness Training 2019-20

Due Date: 10/31/2019

(This is an automated confirmation message. Please do not reply to this email.)

All LAUSD employees are mandated by LAUSD [Policy MEM-6910.3](#) to participate in the Suicide Prevention and Awareness Training annually. To that end, you have been enrolled in the 40-minute web-based online Suicide Prevention and Awareness Training. **The training deadline for this compliance cycle is October 31, 2019.**

New employees hired after September 16th are required to complete the Suicide Prevention and Awareness Training within 45 days of receiving the enrollment email.

To access the online training, please log in to My Professional Learning Network (MyPLN) and click on the Transcript button to launch the course. Please [click here](#) for step-by-step instructions.

- If you encounter any challenges logging into the system or accessing the training, please contact the ITD Helpdesk.
- For assistance by telephone, call (213) 241-5200. When prompted, select Option 8.
- For MyPLN access, account, or transcript support, [submit your request ticket here](#).

Thank you for your efforts to comply with this mandate.

[Click here](#) to go to your transcript (login required) to locate and begin your training.

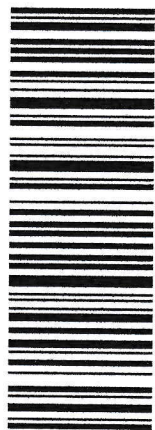


LOS ANGELES UNIFIED SCHOOL DISTRICT

[Website Accessibility](#) | [Privacy Policy](#)

PROD SYSTEM 101 3123955

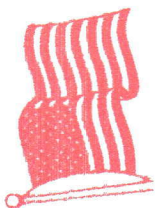
CERTIFIED MAIL®



7019 2280 0000 7398 7388

stone
LAW APC
tury Park East, Ste 1000
es, CA 90067

LOS ANGELES UNIFIED SCHOOL DISTRICT
333 S. BEAUDRY AVENUE, 24TH FLR
LOS ANGELES, CA 90017



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LOS ANGELES UNIFIED SCHOOL
DISTRICT
333 S. BEAUDRY AVENUE, 24TH FLR
LOS ANGELES, CA 90017



9590 9403 0424 5163 3611 21

2. Article Number (Transfer from service label)

7019 2280 0000 7398 7388

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

LOS ANGELES UNIFIED SCHOOL
DISTRICT

333 S. BEAUDRY AVENUE, 24TH FLR
LOS ANGELES, CA 90017

Postmark
Here

Anderson V.
Los Angeles Unified
School District

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

EXHIBIT “2”

JAMIE R. GREENE
310.556.4165 Direct
Jamie.Green@capstonelawyers.com

July 2, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Nohemi Delgado v. Los Angeles Unified School District*

Dear PAGA Administrator:

This office represents Nohemi Delgado in connection with her claims under the California Labor Code. Ms. Delgado was an employee of LOS ANGELES UNIFIED SCHOOL DISTRICT (“LAUSD”).

The employer may be contacted directly at the address below:

LOS ANGELES UNIFIED SCHOOL DISTRICT
333 S. BEAUDRY AVENUE, 24TH FLR
LOS ANGELES, CA 90017

Ms. Delgado intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Delgado seeks relief on behalf of herself, the State of California, and other persons who are or were employed by LAUSD in California as a non-exempt, hourly paid substitute teacher and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

LAUSD employed Ms. Delgado as a non-exempt, hourly paid substitute teacher from approximately March 2016 to March 2020. During her employment, Ms. Delgado worked for LAUSD at two schools within the school district: Fishburn Avenue Elementary in Maywood, California and Fourth Street Elementary School in Los Angeles, California. Ms. Delgado typically worked six (6) hours or more per day, five (5) days per week, approximately 30 hours or more per week. When her employment ended, Ms. Delgado was compensated approximately \$17.84 per hour. Ms. Delgado’s primary job duties included, without limitation, assisting classroom teachers with monitoring and supervising students, including developmentally disabled and special needs students, assisting teachers in implementing classroom curriculum, lifting students in and out of holding or locomotive

devices, assisting students with toileting and changing diapers, assisting students with mobility and mobility equipment, reading to students, and assisting teachers with behavioral corrections.

LAUSD has committed one or more of the following Labor Code violations against Ms. Delgado, the facts and theories of which follow, making her an “aggrieved employee” under California Labor Code section 2699(c):¹

LAUSD’s District-Wide and Uniform Timekeeping Practices and Training Requirements

LAUSD is a public school district located and headquartered in Los Angeles County. LAUSD operates the largest public school system in the State of California, and the second largest public school system in the United States. LAUSD is the second largest employer in the County of Los Angeles, employing approximately 66,523 employees for the 2019-2020 school year.² Upon information and belief, LAUSD maintains a single, centralized Human Resources (HR) department at its headquarters in Los Angeles, California, for all non-exempt, hourly paid employees working for LAUSD in California, including Ms. Delgado and other aggrieved employees. At all relevant times, LAUSD issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Delgado and other aggrieved employees, regardless of their school location.

Upon information and belief, LAUSD maintains a centralized Payroll department at its headquarters in Los Angeles. The Payroll department processes payroll for all non-exempt, hourly paid employees working for LAUSD in California, including Ms. Delgado and other aggrieved employees. Further, LAUSD issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Delgado and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In short, LAUSD utilized the same methods and formulas when calculating wages due to Ms. Delgado and other aggrieved employees in California.

At all relevant times, LAUSD maintained and implemented uniform training requirements for all substitute teachers in California, including Ms. Delgado and other aggrieved employees, regardless of the location of the school at which they worked. A substantial portion of LAUSD’s mandatory training was to be completed remotely via web-based online training modules, to be completed twice per year. LAUSD’s mandatory online training modules included, without limitation, the following training programs/courses: Disability Awareness and ADA Compliance Training; Suicide Prevention and Awareness Training; 2018/2019 Fall Child Abuse Awareness Training; Protective Factors and Psychological First Aid for Students; and other courses.

¹ These facts, theories, and claims are based on Ms. Delgado’s experience and counsel’s review of those records currently available relating to Ms. Delgado’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims of which the aggrieved employee was not initially aware, either because the aggrieved employee was not aware of the law’s requirements, or because the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations. Ms. Delgado reserves the right to supplement this letter with additional facts, theories, and claims of which she becomes aware after the submission of this letter.

²See

<https://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=52741&dataid=89340&FileName=Fingertip%20Facts%202019-2020.pdfF.pdf> (site last visited June 18, 2020)

LAUSD's online training requires substitute teachers to utilize their own desktop or laptop computers at home to complete the online training. LAUSD instructs substitute teachers to enter their user-specific login credentials at a dedicated website to access the online training modules. LAUSD notifies substitute teachers of mandatory training by sending out emails to all substitute teachers automatically enrolling them in mandatory online training and assigning various deadlines by which training must be completed. LAUSD's emails instruct substitute teachers to log in to the My Professional Learning Network ("MyPLN") and provides a hyperlink within the email to access and complete the mandated training. (See exemplar email from LAUSD attached hereto as Exhibit "A.") The MyPLN website is and was accessible only by desktop or laptop computer. Below is a screenshot of LAUSD's MyPLN website³:



Ms. Delgado and other aggrieved employees followed LAUSD's instructions and completed the online training modules outside of their substitute teaching hours. Even though LAUSD required that Ms. Delgado and other aggrieved employees complete the mandatory training, it did not provide Ms. Delgado and other aggrieved employees with any method for recording the hours they spent completing the training and did not pay them for this time.

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which an employee is subject to the control of an employer, and

³ https://achieve.lausd.net/cms/lib/CA01000043/Centricity/domain/644/__mypln_login/ (last visited June 24, 2020)

includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

As set forth above, LAUSD implemented district-wide mandatory training requirements for all substitute teachers, including Ms. Delgado and other aggrieved employees, but did not compensate them for the time spent completing the required training. As also stated, LAUSD failed to implement any mechanism or procedure for Ms. Delgado and other aggrieved employees to record their hours spent completing mandatory online training modules. At all times, LAUSD controlled selecting the courses and training and setting the deadlines by which training had to be completed by Ms. Delgado and other aggrieved employees. During the relevant period, Ms. Delgado spent approximately one (1) to two (2) hours completing each required online training module. Similarly, other aggrieved employees spent hours completing LAUSD’s mandatory online training modules. However, LAUSD did not compensate Ms. Delgado and other aggrieved employees for the time they spent completing the required training.

In addition, LAUSD had a district-wide practice and/or policy of requiring other aggrieved employees to perform preparation work before class and prepare post-class reports but failed to compensate other aggrieved employees for this time. Instead, LAUSD only compensated other aggrieved employees for their scheduled shift times during which class was in session. For example, other aggrieved employees were required to spend up to three (3) hours preparing for a class while off-the-clock, and at times were required to stay after class for up to two (2) hours to continue assisting with curriculum preparation, decorating the classroom, and event preparation. LAUSD also required other aggrieved employees to report early before class (and before their scheduled shifts) to ride buses with special needs students who needed one-on-one supervision, but did not compensate them for this additional time. LAUSD does not have any mechanism or procedure in place to allow aggrieved employees to record additional time spent performing work before or after classes, and instead simply pays them for the set amount of hours while students are in the classroom, regardless of their actual hours worked.

Further, LAUSD had a district-wide policy and/or practice of requiring other aggrieved employees to attend mandatory after-school school faculty meetings but did not compensate other aggrieved employees for this time. These after-school faculty meetings could last up to two (2) hours, and LAUSD did not compensate other aggrieved employees for any of this time.

As a result, LAUSD regularly has failed to pay at least minimum wages to Ms. Delgado and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Delgado and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2)

times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, LAUSD had a company-wide policy and/or practice of requiring Ms. Delgado and other aggrieved employees to use their own internet service providers to complete online training modules from home, but did not reimburse them for their internet service expenses. Although LAUSD required Ms. Delgado and other aggrieved employees to utilize their own internet service providers to complete necessary work duties, LAUSD failed to reimburse them for these expenses and instead passed these operating costs off onto Ms. Delgado and other aggrieved employees.

Thus, LAUSD had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Delgado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Ms. Delgado, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against LAUSD for violations of California Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Delgado seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Delgado’s reasonable attempt to settle her dispute with LAUSD prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform LAUSD of Ms. Delgado’s aforementioned grievances and the proposed remedies as detailed below, while affording LAUSD a reasonable opportunity to satisfy Ms. Delgado’s demands.

Demand is hereby made that LAUSD shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. LAUSD shall pay Ms. Delgado and all other aggrieved employees employed by LAUSD at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations;
2. LAUSD shall comply with all California labor laws and ensure that Ms. Delgado and/or other aggrieved employees are paid minimum wages for all hours worked;
3. LAUSD shall conduct a survey or interview all current and former aggrieved employees in California who worked for LAUSD in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of employees who were required to pay for internet service expenses to complete requisite online training, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days;

4. LAUSD shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for LAUSD's benefit, including, but not limited to, costs of, internet service expenses, as required by Labor Code section 2802;
5. LAUSD shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages; and
6. LAUSD shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 1197.1, 1199, and 2699, and Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me:

Jamie R. Greene
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Jamie R. Greene

Copy: LOS ANGELES UNIFIED SCHOOL DISTRICT (via U.S. Certified Mail)

Exhibit A

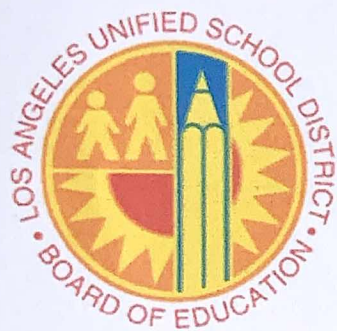
Jamie Greene

From: MyPLN@lausd.net <MyPLN@lausd.net>

Sent: Thursday, July 18, 2019 2:02:26 PM

To:

Subject: Action Required: You have been registered for Suicide Prevention and Awareness Training 2019-20



My Professional Learning Network

Dear _____

You have been enrolled in the following training item:

Suicide Prevention and Awareness Training 2019-20

Due Date: 10/31/2019

(This is an automated confirmation message. Please do not reply to this email.)

All LAUSD employees are mandated by LAUSD [Policy MEM-6910.3](#) to participate in the Suicide Prevention and Awareness Training annually. To that end, you have been enrolled in the 40-minute web-based online Suicide Prevention and Awareness Training. **The training deadline for this compliance cycle is October 31, 2019.**

New employees hired after September 16th are required to complete the Suicide Prevention and Awareness Training within 45 days of receiving the enrollment email.

To access the online training, please log in to My Professional Learning Network (MyPLN) and click on the Transcript button to launch the course. Please [click here](#) for step-by-step instructions.

- If you encounter any challenges logging into the system or accessing the training, please contact the ITD Helpdesk.
- For assistance by telephone, call (213) 241-5200. When prompted, select Option 8.
- For MyPLN access, account, or transcript support, [submit your request ticket here](#).

Thank you for your efforts to comply with this mandate.

[Click here](#) to go to your transcript (login required) to locate and begin your training.

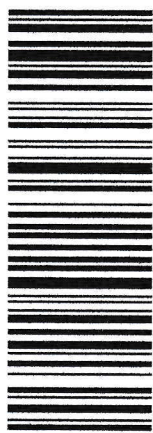


LOS ANGELES UNIFIED SCHOOL DISTRICT

[Website Accessibility](#) | [Privacy Policy](#)

PROD SYSTEM 101 3123955

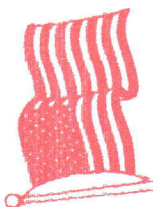
CERTIFIED MAIL®



7019 2280 0000 7398 7364

stone
LAW APC
Century Park East, Ste 1000
es, CA 90067

LOS ANGELES UNIFIED SCHOOL DISTRICT
333 S. BEAUDRY AVENUE, 24TH FLR
LOS ANGELES, CA 90017



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LOS ANGELES UNIFIED SCHOOL DISTRICT
333 S. BEAUDRY AVENUE, 24TH FLR
LOS ANGELES, CA 90017



9590 9403 0424 5163 3611 14

2. Article Number (Transfer from service label)

7019 2280 0000 7398 7364

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
- If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☒ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

Street and Apt. No., or P.O. Box No.

City, State, ZIP+4®

LOS ANGELES UNIFIED SCHOOL DISTRICT

333 S. BEAUDRY AVENUE, 24TH FLR
LOS ANGELES, CA 90017

Postmark
Here

Delgado v. Los
Angeles Unified
School District

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions