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Case #20CV369344
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

SUSANA LUNA, an individual;
CLAUDIA UCHICUA, an individual; and
LAURA PADILLA, an individual; on behalf
of themselves and other members of the
general public similarly situated,

Plaintiffs,

v.

ESCUELA POPULAR DEL PUEBLO, a
California Corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No. 20CV369344

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES AND INJUNCTIVE RELIEF
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Off-Duty Meal Periods;
4. Failure to Provide Off-Duty Rest Periods;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay Wages Due at Termination;
7. Failure to Indemnify for Necessary Expenditures;
8. Unfair Competition; and
9. Civil Penalties Under the Private Attorneys' General Act.

DEMAND FOR JURY TRIAL

1 Plaintiffs SUSANA LUNA, CLAUDIA UCHICUA and LAURA PADILLA (hereinafter
2 “Plaintiffs”), by and through their attorneys of record, allege and complain against ESCUELA
3 POPULAR DEL PUEBLO, a California corporation, and DOES 1 through 10, inclusive, (collectively
4 the “Defendants”):

5 **INTRODUCTION**

6 1. For the past 35 years, Defendant Escuela Popular del Pueblo (“Escuela Popular”) has
7 presented itself to the community of East San Jose as a family learning center grounded on the teaching
8 principles of Paulo Freire – a revolutionary Brazilian thinker who wrote extensively about the power
9 and ability of an educator to effectuate change in society. Freire’s philosophical and pedagogical
10 principles are grounded on the idea that the educator must humble himself/herself in order to develop
11 a condition of reciprocal trust and communication with those s/he seeks to teach and educate. Freire
12 urged teachers and students to unlearn social constructs of race, class, and gender privileges to permit
13 an open dialogue with those of differing views and experiences. Freire asked the more privileged
14 educational and revolutionary leaders to struggle in partnership with the “oppressed” to bring about a
15 more enlightened and equitable world. The ultimate goal of Freire’s philosophy of education is to
16 develop an organic political consciousness rooted in humanitarian principles in the participants of the
17 educational process.

18 2. Freire does not counsel educational institutions to deprive teachers of a livable wage or
19 to deprive teachers of basic rights, such as meaningful health and safety breaks. In fact, it would be
20 antithetical to Freire’s philosophy to further oppress others to carry out an educational project. For at
21 least the past four years, Defendant Escuela Popular has betrayed its founding principles and violated
22 the California Labor Code by engaging in a scheme to misclassify Plaintiffs, and other similarly
23 situated members of Defendants’ teaching staff, as exempt employees.

24 3. Plaintiffs bring this First Amended Class and Representative Action Complaint
25 (“FAC”) for wage and hour claims and civil penalties on behalf of themselves, as individuals, and all
26 other similarly situated teaching personnel classified as exempt employees, as well as, aggrieved
27 employees under the Private Attorneys’ General Act of 2004 (“PAGA”), currently or formerly
28 employed in California by: ESCUELA POPULAR DEL PUEBLO, a California corporation, and

DOES 1 through 10, inclusive.

4. At all times relevant to this FAC, Defendants owned and operated a charter school in San Jose, California.

5. At all times relevant to this FAC, Defendants are and were employers within the meaning of the California Labor Code and the Industrial Welfare Commission Wage (“IWC”) Order No. 4-2001 (“IWC Wage Order No. 4-2001”).

6. At all times relevant to this FAC, Defendants employed a large teaching staff to instruct students of varying ages and backgrounds in their various academies.

7. At all times relevant to this FAC, Defendants compensated their teaching staff, including but not limited to, teachers, instructors and special education paraprofessionals, with a fixed biweekly salary, as noted in the individual wage statements for members of the teaching staff. The fixed biweekly amount received by each member of Defendants’ teaching staff did not increase or decrease depending on the hours worked, or the quantity and/or quality of the work.

8. At all times relevant to this FAC, Plaintiffs, like the rest of the teaching staff, were not compensated for a single hour of overtime. Regardless of how many hours they worked in any particular workday or workweek, Plaintiffs’ biweekly compensation remained fixed. Defendants also never tracked or recorded the time worked by its teaching staff.

9. Moreover, at all times relevant to this FAC, Defendants did not require members of their teaching staff to have a bachelor’s degree from an accredited institution of higher learning. Defendants also did not require members of the teaching staff to possess any teaching credentials from a certificating authority in California or any other state. Even though Defendants did not require their teaching staff to have the aforementioned experience and credentials, Defendants nevertheless held all their teaching staff to the same standards as credentialed teachers and required them to perform the same duties on a daily basis, including the preparation of lesson plans, documentation of students’ progress, assignments of homework, and the grading of tests, among others. Notably, members of the teaching staff at Escuela Popular did not have any supervisory or managerial duties, as they had to follow lesson plan goals set by their Instructional Leaders.

10. Despite the fact that Plaintiffs, and other members of the teaching staff, did not fit into

1 any overtime exemptions under the California Labor Code, Defendants misclassified Plaintiffs as
2 exempt from overtime pay and paid Plaintiffs a fixed salary without paying them overtime
3 compensation and without providing them any meal and rest breaks. Consistent with the duties
4 required of credentialed teachers, Plaintiffs and other Escuela Popular teachers, instructors and special
5 paraprofessionals worked long hours to meet the needs of their students and to execute all the
6 educational goals set by Defendant Escuela Popular. For example, Plaintiffs regularly worked sixty
7 (60) to seventy (70) hours per week and regularly attended mandatory meetings and educational
8 committees.

9 11. Because Defendants misclassified Plaintiffs and other members of the teaching staff as
10 exempt employees, Plaintiffs bring this FAC against Defendants for the recovery of unpaid wages and
11 penalties for: (i) failing to pay minimum wages; (ii) failing to pay overtime wages; (iii) failing to
12 provide uninterrupted off-duty meal periods and/or required meal period premiums; (iv) failing to
13 provide uninterrupted off-duty rest periods and/or required rest period premiums; (v) failing to furnish
14 accurate wage statements; (vi) failing to maintain wages due upon termination; (vii) failing to
15 indemnify necessary business expenditure; and (viii) engaging in unfair competition.

16 12. On information and belief, Defendants had actual or constructive knowledge of the
17 improprieties alleged in this FAC and intentionally refused to rectify their unlawful policies in order
18 to perpetuate a systematic practice of unlawful wage theft.

19 13. At all times relevant to this FAC, Defendants' violations of the California Labor Code
20 and Wage Order No. 4-2001 were willful, deliberate, and aimed at maximizing profit at the expense
21 of their employees' rights. Moreover, Defendants, as the employer of Plaintiffs and the other members
22 of their teaching staff, were and are legally responsible for all of the unlawful conduct, policies,
23 practices, acts and omissions, as alleged in this FAC.

24 14. In view of the systematic practice of unlawful wage theft committed by Defendants,
25 Plaintiffs, on behalf of themselves, as individuals, and on behalf of all similarly situated current and
26 former salaried members of the teaching staff including but not limited to, teachers, instructors and
27 special education paraprofessionals, seek compensatory, statutory, declaratory, and injunctive relief
28 to compensate them and their fellow workers for the unpaid and underpaid wages that Defendants

1 have stolen from them and to protect current and future employees from being subjected to similar
2 wage theft and otherwise unlawful working conditions.

3 15. Furthermore, in view of the systematic practice of unlawful wage theft committed by
4 Defendants, Plaintiffs and the aggrieved employees under PAGA seek the recovery of civil penalties
5 to the extent permitted by law.

6 **JURISDICTION AND VENUE**

7 16. This FAC is brought pursuant to California Code of Civil Procedure section 382. The
8 monetary damages and restitution sought by Plaintiffs, on behalf of themselves and other similarly
9 situated salaried members of Defendants' teaching staff, exceed the minimal jurisdiction limits of the
10 Superior Court of California and will be established according to proof at trial.

11 17. This Court has original jurisdiction over this FAC pursuant to California Constitution,
12 Article VI, Section 10, which grants the Superior Court of California "original jurisdiction in all other
13 causes" except those causes given by statute to other courts. The statutes under which this FAC is
14 brought do not specify any other basis for jurisdiction.

15 18. Upon information and belief, this Court has personal jurisdiction over all Defendants
16 in this FAC because each party is either a citizen of California, has sufficient minimum contacts in
17 California, or otherwise intentionally avails itself of the California market so as to render the exercise
18 of jurisdiction over it by California courts consistent with traditional notions of fair play and
19 substantial justice.

20 19. Venue is proper in the County of Santa Clara pursuant to California Code of Civil
21 Procedure section 395.5. Plaintiffs were employed and performed work for Defendants in the County
22 of Santa Clara, California, during the time period relevant to this Complaint. Moreover, Defendants
23 maintain offices, have agents, and/or transact business in the County of Santa Clara.

24 **PARTIES**

25 20. At all times relevant to this FAC, Plaintiffs Susana Luna, Claudia Uchicua and Laura
26 Padilla resided in the County Santa Clara, California.

27 21. Plaintiff Susana Luna is an individual over the age of eighteen (18) residing in Santa
28 Clara County, California. Plaintiff Luna worked for Escuela Popular for approximately thirteen (13)

1 years, from 2007 through June 2020. At all times relevant to this lawsuit, Plaintiff Luna worked for
2 Escuela Popular as an Instructor.

3 22. Plaintiff Claudia Uchicua is an individual over the age of eighteen (18) residing in
4 Santa Clara County, California. Plaintiff Uchicua worked for Escuela Popular for approximately ten
5 (10) years, from 2009 through 2019. At all times relevant to this lawsuit, Plaintiff Uchicua worked
6 for Escuela Popular as an Instructor.

7 23. Plaintiff Laura Padilla is an individual over the age of eighteen (18) residing in Santa
8 Clara County, California. Plaintiff Padilla worked for Escuela Popular for approximately five (5)
9 years, from August 2015 through August 2020. At all times relevant to this lawsuit, Plaintiff Luna
10 worked for Escuela Popular as an Instructor, Teacher, and Special Education Paraprofessional.

11 24. Defendant Escuela Popular del Pueblo is a California State corporation located in the
12 City of San Jose. Escuela Popular maintains its principal business and executive office in Santa Clara
13 County, located at: 149 North White Road, San Jose, California 95127.

14 25. The true names and capacities of Defendants DOES 1 through 10 inclusive, whether
15 corporate, associate, individual or otherwise, are unknown to Plaintiffs and Plaintiffs therefore sue
16 these DOE defendants by fictitious names. On information and belief, each of the DOE defendants is
17 liable for the unlawful acts alleged in this FAC and proximately caused the injuries and damages to
18 Plaintiffs and Class Members prosecuting this FAC. Once Plaintiffs ascertain the true names and
19 capacities of these DOE Defendants, Plaintiffs will seek leave of court to file an amended FAC.

20 26. At all times relevant to this FAC, Defendants were the “employer” of Plaintiffs within
21 the meaning of all applicable California laws and statutes.

22 27. At all times relevant to this FAC, Defendants were subject to the California Labor Code
23 and IWC Wage Order 4-2001 because their employees worked in the County of Santa Clara and the
24 State of California.

25 28. At all times relevant to this FAC, each of the Defendants were the agents, partners,
26 joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-
27 conspirators and/or assigns, of each of the other Defendants.

28 29. At all times relevant to this FAC, each of the Defendants were acting within the course

1 and scope of their authority as such agents, partners, joint venturers, joint employers, representatives,
2 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged in
3 this FAC were committed with the ratification, knowledge, permission, encouragement, authorization
4 and/or consent of each alleged DOE Defendant.

5 30. Plaintiffs further allege Defendants directly or indirectly controlled or affected the
6 wages, working hours, and conditions of employment of Plaintiffs and Class Members so as to make
7 each of the Defendants liable under the statutory provisions set forth in this FAC as joint employers.

8 **CLASS ACTION ALLEGATIONS**

9 31. Plaintiffs bring this action on their own behalf and on behalf of all other members of
10 the general public similarly situated who were affected by Defendants' violations of the California
11 Labor Code, IWC Wage Order No. 4-2001, and Business and Professions Code section 17200 et seq.

12 32. Plaintiffs bring and maintain this action under Code of Civil Procedure section 382
13 because a well-defined community of interest exists among the persons who comprise readily
14 ascertainable classes, as defined below.

15 33. **Relevant Time Period:** The Relevant Time Period is the time period beginning four
16 years prior to the filing of this action until judgment is entered.

17 34. **Class Definitions:**

- 18 a. Minimum Wage Class: All current and former members of Defendants'
19 teaching staff classified as exempt in California who were subject to
20 Defendants' time and pay policies/practices, during the Relevant Time Period.
- 21 b. Overtime Class: All current and former members of Defendants' teaching staff
22 classified as exempt in California who worked more than eight hours per day
23 and/or forty hours per week and were subjected to Defendants' time and pay
24 policies/practices, during the Relevant Time Period.
- 25 c. Meal Period Class: All current and former members of Defendants' teaching
26 staff classified as exempt in California who worked at least one shift in excess
27 of five (5.0) hours during the Relevant Time Period.
- 28 d. Rest Period Class: All current and former members of Defendants' teaching

1 staff classified as exempt in California who worked at least one shift in excess
2 of three and one-half (3.5) hours during the Relevant Time Period.

3 e. Wage Statement Penalty Class: All current and former members of Defendants'
4 teaching staff classified as exempt in California who received a wage statement
5 from Defendants, during the period beginning one year before the filing of this
6 action and ending when final judgment is entered.

7 f. Waiting Time Penalty Class: All members of Defendants' teaching staff
8 classified as exempt in California who separated from their employment with
9 Defendants during the period beginning three years before the filing of this
10 action and ending when final judgment is entered.

11 g. Business Expenses Reimbursement Class: All current and former members of
12 Defendants' teaching staff classified as exempt in California who incurred
13 necessary business expenses during their employment with Defendants and
14 who were not indemnified by Defendants for those expenses during the
15 Relevant Time Period.

16 h. UCL Class: All members of the: (i) Minimum Wage Class; (ii) Overtime Class;
17 (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Penalty
18 Class; (vi) Business Expenses Reimbursement Class; and (vii) Waiting Time
19 Penalty Class.

20 35. Plaintiffs reserve the right to seek leave of this Court to amend this FAC to plead
21 additional subclasses or modify any Class definition as Plaintiffs deem appropriate, based on their
22 investigation, discovery, and specific theories of liability.

23 36. Members of the Classes described above will be collectively referred to as "Class
24 Members" in this FAC.

25 37. **Numerosity**: The Class Members are so numerous that joinder of all Class Members
26 is impracticable. The entire memberships of the Classes are unknown to Plaintiffs at this time;
27 however, the Classes are estimated to be greater than forty (40) individuals for each Class and the
28 identities of Class Members are readily ascertainable by an inspection of Defendants' employment

1 records.

2 38. **Commonality and Predominance:** Common questions of law and fact exist as to all
3 Class Members and predominate over any questions that affect only individual Class Members. These
4 common questions include, but are not limited to:

- 5 a. Whether Defendants had a corporate policy and practice of failing to pay
6 members of their teaching staff within the State of California for all hours
7 worked;
- 8 b. Whether Defendants failed to pay minimum wages to Plaintiffs and Class
9 Members for all hours worked;
- 10 c. Whether Defendants failed to pay overtime wages to Plaintiffs and Class
11 Members for all overtime hours worked;
- 12 d. Whether Defendants' failure to pay wages, including minimum and overtime
13 pay, without abatement or reduction in accordance with the California Labor
14 Code and IWC Wage Order 4-2001 was willful;
- 15 e. Whether Defendants required Plaintiffs and Class Members to work over eight
16 (8) hours per day and/or over forty (40) hours per week and failed to pay the
17 legally required overtime compensation to Plaintiffs and Class Members;
- 18 f. Whether Defendants had a corporate policy and practice of failing to pay
19 Plaintiffs and Class Members premium pay for missed meal and rest periods
20 (short, late, interrupted, and/or missed altogether) in violation of California law;
- 21 g. Whether Defendants deprived Plaintiffs and Class Members of meal and/or rest
22 periods or required Plaintiffs and Class Members to work during meal and/or
23 rest periods without compensation;
- 24 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and Class
25 Members during their employment;
- 26 i. Whether Defendants failed to pay all wages due to Plaintiffs and Class
27 Members within the required time upon their separation – discharge or
28 resignation;

- j. Whether Defendants provided accurate, itemized wage statements to Plaintiffs and Class Members as required by California law;
- k. Whether Defendants failed to reimburse Plaintiffs and Class Members for necessary business-related expenses and costs;
- l. Whether Defendants' conduct was willful or reckless;
- m. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200 et seq.;
- n. Whether Plaintiffs and Class Members are entitled to compensatory damages pursuant to the California Labor Code and IWC Wage Order No. 4-2001; and
- o. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law.

39. **Typicality:** Plaintiffs' claims are typical of the claims of other Class Members. Plaintiffs are informed and believe and thereon allege that Defendants have a policy or practice of failing to comply with the California Labor Code, IWC Wage Order No. 4-2001 and the Business and Professions Code as alleged in this FAC.

40. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each Class Member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated in this FAC. Plaintiffs have no interest that is antagonistic to the other Class Members. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred and will continue to incur during the pendency of this FAC, costs and attorneys' fees that have been, are, and will necessarily be expended for the prosecution of this FAC for the substantial benefit of each Class Member.

41. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

42. **Public Policy Considerations:** Certification of this FAC as a class action will advance public policy objectives. Employers throughout the State of California violate employment and labor laws on a daily basis. Current employees are often reluctant to assert their rights individually because of fear of direct or indirect retaliation by their employers. Class actions however provide Class

Members, who are not specifically named in the FAC, with anonymity that allows for the vindication of their rights without fear of direct or indirect retaliation by their employers.

GENERAL ALLEGATIONS

43. At all times relevant to this FAC, Defendants employed Plaintiffs and other California residents as salaried employees within the State of California, including the County of Santa Clara.

44. During the four years immediately preceding the filing of this action, Defendants employed Plaintiffs as full-time and/or part-time members of its teaching staff in the positions of Instructors, Teachers, and/or Special Education Paraprofessionals.

45. Plaintiffs are informed, believe, and thereon allege that Escuela Popular is a charter school. Escuela Popular operates four (4) different educational academies: (1) Childcare Academy; (2) TK-8th Dual Language Academy; (3) High School Youth Bilingual Academy; and (4) High School Adults Bilingual Academy and Vocational Training. All of these academies are operated independently from the local school districts and are geared to serve the community of East San Jose.

46. Plaintiffs are informed, believe, and thereon allege, that during the four years preceding the filing of this action and continuing to the present, Defendants employed a large teaching staff in each of their four educational academies. The teaching staff hired was not required to have teaching credentials nor a bachelor's degree.

47. Plaintiffs are informed, believe, and thereon allege that Defendants compensated their teaching staff, including but not limited to, Instructors, Teachers, and Special Educational Paraprofessionals, with a fixed salary and characterized them as exempt employees.

48. Plaintiff Luna specifically worked as an Instructor for the following courses: English as a Second Language – Level 2A; English as a Second Language – Level 3A; English as a Second Language – Level 3B; Basic Math (Modules E, F, F2, and L); Math Lab; and Theatre.

49. Plaintiff Padilla worked in various positions throughout her employment with Defendants. More specifically, Defendants assigned her to the position of Teacher in the 2016-2017 and 2017-2018 academic years; the position of Special Education Paraprofessional in the 2019-2020 and 2020-2021 academic years; and the position of Instructor in the 2019-2020 and 2020-2021 academic years. Defendants asked Plaintiff Padilla to teach various English, Math and English as a

1 Second Language courses in their different academies.

2 50. Plaintiff Uchicua specifically worked as an Instructor for the following courses:
3 English as a Second Language – Level 1B; English as a Second Language – Level 2A; English as a
4 Second Language – Level 2B; English as a Second Language – Level 3A; English – Level 1; Basic
5 Math (Modules F, G, and H); and Social Studies.

6 51. Defendants continue to employ and misclassify members of their teaching staff in
7 California.

8 **Plaintiffs' and Class Members' Job Duties and Responsibilities**

9 52. As Instructors, Teachers, Special Educational Paraprofessionals and other members of
10 Defendants teaching staff, Plaintiffs and Class Members were charged with performing all the duties
11 and responsibilities assigned to credentialed teachers at Defendant Escuela Popular. These duties and
12 responsibilities included: (1) providing multiple subject instruction in Spanish and English; (2)
13 preparing daily lesson plans using textbook materials, supplemental instructional materials, and audio
14 visual aids; (3) implementing curricula and classroom activities to comply with state standards; (4)
15 conferring with parents and students periodically to assess progress; (5) providing behavioral and
16 academic intervention for students; (6) supervising and disciplining students in accordance with the
17 student discipline code; (7) evaluating students through teacher-made tests, standardized tests, and
18 observations; (8) participating in extracurricular and school community activities; (9) collaborating
19 with colleagues to align curriculum and share best practices; and (10) maintaining office hours to
20 attend to educational student needs and concerns.

21 53. Plaintiffs' and Class Members' job duties did not involve exercising discretion over
22 matters of significance at Defendant Escuela Popular. For example, Instructors, Teachers, and Special
23 Education Paraprofessionals did not have any supervisory authority over any other employees.
24 Moreover, members of the teaching staff did not have input concerning the educational curricula for
25 the various classes they taught at Defendant Escuela Popular. In fact, Plaintiffs Luna, Padilla and
26 Uchicua reported directly to the instructional leaders and principals of the morning and afternoon
27 shifts.

28 54. Although Plaintiffs' and Class Members' daily schedule varied from day to day,
12.

1 Plaintiffs and Class Members generally worked a shift of eight (8) to ten (10) hours per day on the
2 premises of Defendant Escuela Popular, which included making themselves available to students for
3 office hours. Plaintiffs and Class Members also performed work outside of the school's premises to
4 prepare lesson plans, prepare progress examinations, and grade exams and assignments.

5 55. As part of their job duties, Plaintiffs and Class Members also were required to
6 participate in at least three different school committees. For example, Plaintiff Luna was required to
7 participate in the Awards and Day of the Dead Committees. Plaintiff Luna also was required to
8 organize and participate in the annual parents/teachers conference held at Defendant Escuela Popular.
9 On some occasions, Defendant Escuela Popular forced its teaching staff to carry out their committee
10 work during meal and rest break periods. On other occasions, Defendant Escuela Popular required its
11 teaching staff to attend committee activities on the weekends, especially when such activities included
12 field trips to various locations throughout the Bay Area.

13 56. At all relevant times during their work-related travels, Plaintiffs and Class Members
14 were subject to the control and direction of Defendants and their agents.

15 57. Prior to the start of every school year, Defendant Escuela Popular provided and
16 continues to provide written employment agreements to its teaching staff detailing their yearly
17 compensation, work schedule, and benefits. On information and belief, the Employment Agreements
18 are essentially identical for every Instructor, Teacher, and Special Education Paraprofessional at
19 Defendant Escuela Popular. Notably, some of the Employment Agreements conspicuously and
20 explicitly indicate that the member of the teaching staff is a non-exempt employee at the top of the
21 first page.

22 58. Section B(2) of Defendant Escuela Popular's Employment Agreements is entitled
23 "Work Schedule." Yet, it fails to provide a specific work schedule for each Instructor, providing
24 instead that the work schedule is to be "determined by Supervisor."

25 59. Section B(3) of Escuela Popular's Employment Agreements provides the total base
26 compensation that Instructors are to receive on an annual basis. This Section also indicates that the
27 teaching staff members are to be paid in bi-monthly installments. Section B(3) fails to provide specific
28 regular hourly rates and overtime hourly rates.

1 60. Although Plaintiffs and Class Members regularly worked substantially more than eight
2 hours (8) per day and forty (40) hours per week during their employment with Defendants, Defendants
3 did not compensate Plaintiffs and Class Members at the mandated time-and-a-half rate for hours
4 worked in excess of eight (8) hours per day and in excess of forty (40) hours per week, or at the
5 mandated double rate for hours worked in excess of twelve (12) hours per day. Defendants instead
6 misclassified Plaintiffs as exempt from overtime pay and paid a salary without any overtime pay
7 during their years of employment.

8 61. Furthermore, because Defendants misclassified Plaintiffs and Class Members as
9 exempt employees, Defendants did not provide Plaintiffs and Class Members with compliant meal
10 and rest periods.

11 62. Among other things, Defendants required Plaintiffs and Class Members to perform an
12 array of work exceeding their scheduled work shifts, including performing work before or after
13 scheduled shifts, working through or during meal periods and rest periods, and working on evenings,
14 weekends and holidays without receiving any compensation.

15 63. Most importantly, Plaintiffs and Class Members spent their workdays performing non-
16 managerial, non-exempt tasks—duties that did not bring Plaintiffs and Class Members within any
17 exemption from overtime under California law.

18 64. In misclassifying Plaintiffs and Class Members as exempt employees, Defendants
19 therefore failed to pay Plaintiffs and Class Members for the regular and overtime hours worked on a
20 daily and weekly basis.

21 65. In misclassifying Plaintiffs and Class Members as exempt employees, Defendants
22 therefore failed to pay Plaintiffs premiums due for untimely, uninterrupted or non-duty-free meal or
23 rest periods.

24 66. At all times relevant to this FAC, on information and belief, skilled lawyers, employees,
25 and other professionals who were knowledgeable about California's wage and hour laws, employment,
26 and personnel practices, and the requirements of California law, advised Defendants.

27 67. At all times relevant to this FAC, California law required Defendants to compensate
28 Plaintiffs and Class Members for all hours worked (including minimum and overtime wages) and

1 Defendants did not compensate Plaintiffs and Class Members for all wages earned for work that
2 Defendants required them to perform. Furthermore, in violation of the Labor Code and IWC Wage
3 Order No. 4-2001, Defendants failed to pay Plaintiffs and Class Members all wages due—including
4 minimum and overtime wages—for all hours worked.

5 68. At all times relevant to this FAC, California law required Defendants to provide
6 Plaintiffs and Class Members with compliant meal periods or pay Plaintiffs and Class Members one
7 (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when Defendants did
8 not provide them with a compliant meal period. On information and belief, in violation of the Labor
9 Code and IWC Wage Order No. 4-2001, Defendants did not always provide Plaintiffs and Class
10 Members with compliant meal periods and did not provide Plaintiffs and Class Members with one (1)
11 additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when Defendants did not
12 provide Plaintiffs and Class Members with a compliant meal period.

13 69. At all times relevant to this FAC, California law required Defendants to provide
14 Plaintiffs and Class Members rest periods or payment of one (1) additional hour of pay at Plaintiffs'
15 and Class Members' regular rate of pay when Defendants did not provide Plaintiffs and Class Members
16 with a compliant rest period. On information and belief, in violation of the Labor Code and IWC Wage
17 Order No. 4-2001, Defendants did not always provide Plaintiffs and Class Members with compliant
18 rest periods and Defendants did not provide Plaintiffs and Class Members with payment of one (1)
19 additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when Defendants did not
20 provide Plaintiffs and Class Members with a compliant rest period.

21 70. At all times relevant to this FAC, California law required Defendants to timely pay
22 Plaintiffs and Class Members their wages due during their employment. On information and belief, in
23 violation of the California Labor Code and IWC Wage Order No. 4-2001, Defendants did not pay
24 Plaintiffs and Class Members all of their wages within the required time periods required.

25 71. At all times relevant to this FAC, California law required Defendants to timely pay
26 Plaintiffs and Waiting Time Class Members their wages upon separation of employment. On
27 information and belief, in violation of the California Labor Code and IWC Wage Order No. 4-2001,
28 Defendants did not pay Plaintiffs and Waiting Time Class Members all of their wages due upon

1 separation of employment within the required time period, including, but not limited to: unpaid
2 minimum and overtime wages.

3 72. At all times relevant to this FAC, California law required Defendants to provide
4 Plaintiffs and Class Members with accurate and itemized wage statements in accordance with
5 California law. On information and belief, in violation of the California Labor Code and IWC Wage
6 Order No. 4-2001, Defendants did not provide Plaintiffs and Class Members with accurate and
7 itemized wage statements detailing their total hours worked, number of hours worked at each hourly
8 rate, and gross and net wages, among other required information .

9 73. At all times relevant to this FAC, California law required Defendants to reimburse
10 Plaintiffs and Class Members for business-related expenditures. On information and belief, in
11 violation of the California Labor Code and IWC Wage Order No. 4-2001, Defendants did not provide
12 Plaintiffs and Class Members with indemnification or reimbursement for all business-related
13 expenditures, including expenses associated with driving their personal vehicles.

14 74. At all times relevant to this FAC, California law required Defendants to fully
15 compensate Plaintiffs and Class Members, and Defendants, despite having the financial ability to pay
16 such compensation, willfully, knowingly and intentionally failed to do so, in order to increase their
17 profits at the expense of Plaintiffs' and Class Members' rights under California law.

18 75. In view of the Defendants' aforementioned violations of the California Labor Code and
19 IWC Wage Order No. 4-2001, Plaintiffs bring this FAC on behalf of themselves, as individuals, and
20 on behalf of all Class Members, seeking monetary and injunctive relief against Defendants to recover,
21 among other things, unpaid wages, interest, attorneys' fees, penalties, costs, and expenses.

22 76. As alleged in this FAC, Defendants have engaged in a systematic pattern and practice
23 of wage theft under the California Labor Code and IWC Wage Order No. 4-2001 for the purpose of
24 maximizing profit at the expense of their employees' rights under California law, all of which
25 contribute to Defendants' deliberate unfair competition.

26 77. Plaintiffs further bring this FAC pursuant to California Labor Code section 218, which
27 provides that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue
28 directly . . . for any wages or penalty due to him [or her] under this article."

SPECIFIC ALLEGATIONS

Failure to Pay Minimum and Overtime Wages

78. First, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their academies to maximize profits. This practice resulted in chronic understaffing, such that there were insufficient employees on duty to handle the workload. Without proper staffing, Defendants lacked the necessary coverage to relieve members of their teaching staff, including Instructors, Teachers and Special Education Paraprofessionals, of their duties. As a result, Defendants did not always provide Plaintiffs and Class Members with meal periods as required by California law. That is, Defendants did not provide Plaintiffs and Class Members with meal periods that were timely, complete, and uninterrupted, if any meal periods were provided at all.

79. Additionally, Defendants required Plaintiffs and Class Members to assist students, administrators, and at times parents, in their classrooms even when they were on their meal periods, interrupting their meal periods and forcing them to work without pay. Given that the teaching staff did not have a break room, separate and apart from their assigned classrooms, Plaintiffs and Class Members regularly had their meal periods interrupted by students, administrators and students' parents after they initiated their meal periods and in between assigned classes. As such, Plaintiffs and Class Members missed meal periods and/or had their meal periods interrupted, without receiving any compensation from Defendants for this time worked.

80. Second, Defendants had, and continue to have, a company-wide policy that fails to pay overtime and double time to their teaching staff. Defendants instituted this scheme in direct violation California law, so that Defendants did not have to pay statutorily required overtime and double time for hours worked in excess of eight (8) and twelve (12) hours in the same day. To effect Defendants' scheme, Defendants did not have a system for tracking and recording the hours worked by their teaching staff. Because of Defendants' unlawful conduct, Defendants did not pay overtime wages for the overtime hours Plaintiffs and Class Members actually worked. Defendants' failure to pay aggrieved employees statutorily required overtime and double time violates the provisions of California Labor Code sections 510 and 1198. For example, Plaintiffs Luna, Uchicua and Padilla regularly worked shifts in excess of eight (8) hours per day, and workweeks in excess of forty (40)

1 hours per week, without receiving overtime compensation, as required by California law.

2 81. Third, on information and belief, Defendants had, and continue to have, a company-
3 wide policy that required Plaintiffs and Class Members to spend time outside of their shifts or on their
4 off days preparing lesson plans, drafting quizzes and exams, evaluating students' performance,
5 attending to school committee responsibilities, attending school-sponsored events, and collaborating
6 with colleagues to align curriculum and share best practices. Even though California law required
7 Defendants to pay Plaintiffs and Class Members for this time, as it was time spent under Defendants'
8 control and for Defendants' benefit, Defendants also failed to compensate Plaintiffs and Class
9 Members for this time.

10 **Failure to Provide Meal Periods**

11 82. As previously alleged in this FAC, Defendants had, and continue to have, a company-
12 wide policy and/or practice of understaffing their academies that resulted in an insufficient number of
13 members of the teaching staff to handle the required workload and a lack of coverage to provide the
14 teaching staff with meal periods as required by California law. Defendants' intentional and chronic
15 understaffing of their academies prevented Plaintiffs and Class Members from taking all timely,
16 complete, and uninterrupted meal periods. As a result of Defendants' practices, Defendants required
17 Plaintiffs and Class Members to work through part or all of their meal periods, permitted their meal
18 periods to be interrupted, and/or wait extended periods of time before taking meal periods.
19 Furthermore, Defendants did not provide Plaintiffs and Class Members with second 30-minute meal
20 periods on days that they worked in excess of ten (10) hours in one day. Plaintiffs and Class Members
21 did not sign valid meal period waivers for days in which they were entitled to meal periods and were
22 not relieved of all duties.

23 83. Defendants knew or should have known that, as a result of their policies, including
24 understaffing, lack of time clocks, and failure to provide meal periods, Defendants did not actually
25 relieve Plaintiffs and Class Members of all their duties, which prevented Plaintiffs and Class Members
26 from taking timely, complete, and uninterrupted meal periods. Defendants also knew or should have
27 known that they did not pay Plaintiffs and Class Members meal period premium wages for late, short,
28 and/or interrupted meal periods.

1 84. Defendants also have engaged in a company-wide practice and/or policy of not paying
2 meal period premiums for days when they did not provide Plaintiffs and Class Members with
3 compliant meal periods. Because of this practice and/or policy, Defendants did not pay Plaintiffs and
4 Class Members premium pay for missed, late, short, or interrupted meal periods.

5 **Failure to Provide Rest Periods**

6 85. As with meal periods, Defendants' company-wide policy and practice of understaffing
7 its four academies resulted in an insufficient number of members of the teaching staff to handle the
8 required workload and a lack of coverage to relieve Plaintiffs and Class Members of all duties in order
9 to provide them with rest periods as required by California law. Plaintiffs and Class Members regularly
10 had their breaks interrupted by students, administrators and students' parents. In view of the foregoing,
11 when attempting to take rest periods, Defendants did not relieve Plaintiffs and Class Members of all
12 duties and instead required Plaintiffs and Class Members to continue working during their rest periods.
13 Plaintiffs and Class Members therefore worked shifts in excess of 3.5 hours, in excess of 6 hours,
14 and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods, as required by
15 California.

16 86. Defendants also have engaged in a company-wide practice and/or policy of not paying
17 employees all rest period premiums when they failed to provide Plaintiffs and Class Members with
18 compliant rest periods. Because of this practice and/or policy, Plaintiffs and Class Members have not
19 received premium pay for all missed rest periods.

20 **Failure to Provide Compliant Wage Statements and Maintain Required Payroll Records**

21 87. Defendants have knowingly and intentionally provided Plaintiffs and Class Members
22 with uniform, incomplete, and inaccurate wage statements. Specifically, Defendants violated sections
23 226, subdivisions (a)(1), (2), (5) and (9). Defendants did not record time Plaintiffs' and Class Members
24 spent working off the clock, which resulted in an unlawful deduction of wages earned and meal period
25 premiums that should have been paid. Thus, Defendants did not furnish wage statements to Plaintiffs
26 and Class Members containing accurate totals of: the gross wages earned (Lab. Code, § 226, subd.
27 (a)(1)); the hours worked (Lab. Code, § 226, subd. (a)(2)); net wages earned (Lab. Code, § 226, subd.
28 (a)(5)) and the number of hours worked at each hourly rate (Lab. Code, § 226, subd. (a)(9)), and.

1 88. Because Defendants did not calculate Plaintiffs' and Class Members' regular rate of
2 pay correctly for purposes of paying overtime, Defendants did not list a total of hours worked or the
3 correct amount of gross wages in compliance with section 226, subdivision (a)(1) and (2). For the
4 same reason, Defendants also failed to list the correct amount of net wages in violation of section 226,
5 subdivision (a)(5). Furthermore, Defendants failed to list the correct amount of net wages earned by
6 Plaintiffs and Class Members in violation of section 226, subdivision (a)(5). Defendants also failed to
7 correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates
8 of pay, in violation of section 226, subdivision (a)(9).

9 89. Defendants failed to maintain and keep required payroll records detailing the name and
10 addresses of all employees employed and to keep, at a central location in the State of California or at
11 the establishments at which employees are enrolled, payroll records detailing the hours worked daily
12 by and the wages paid to all employees employed at the establishment.

13 90. Moreover, Defendants failed to maintain time records detailing when their employees
14 began and ended each work period, meal period, and split shift interval, as required by IWC Wage
15 Order No. 4-2001.

16 **Failure to Timely Pay Wages During Employment**

17 91. At all times relevant to this FAC, Defendants failed to pay Plaintiffs and Class
18 Members all wages due to them, within any time period specified by California Labor Code section
19 204, including, but not limited to: overtime wages; minimum wages; reporting time pay; and meal and
20 rest period premium wages.

21 **Failure to Timely Pay Final Wages Upon Termination**

22 92. Defendants have a company-wide practice or policy of not paying departing employees
23 their final wages on their last day of employment or within seventy-two (72) hours of resigning without
24 prior notice, instead of abiding by the time requirements required by California Labor Code sections
25 201 and 202. Thus, Defendants failed to timely pay Plaintiffs' and Class Members' owed wages within
26 the required time limit, in violation of California Labor Code section 201.

27 93. Additionally, Defendants willfully failed to pay Plaintiffs and Class Members who are
28 no longer employed by Defendants all their earned wages either at the time of discharge, or within

seventy-two (72) hours of their leaving Defendants' employ in violation of California Labor Code sections 201, 202, and 203, including, but not limited to: overtime wages; minimum wages; and reporting time pay.

Failure to Reimburse Business Expenses

94. Defendants had, and continue to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred, in violation of California law.

95. First, at all times relevant to this FAC, Defendants required Plaintiffs and Class Members to purchase various educational materials for their students, including but not limited to: posters; pens; erasers; highlighters; notebooks; hand sanitizers; cleaning supplies; computer accessories; binders; staplers; and desktop hole punchers. For example, because of the lack of materials afforded to members of the teaching staff by Defendants, Plaintiffs Luna, Uchicua and Padilla purchased basic supplies for their students that were necessary to present the educational materials of each of their assigned classes. Despite their numerous requests to the Escuela Popular administration that their expenses be reimbursed, Defendants failed to reimburse Plaintiffs and Class Members for the costs of their work-related expenses in violation of California law.

96. Second, at all times relevant to this FAC, Defendants failed to provide Plaintiffs and Class Members with reimbursement for mileage related to their attendance of school-sponsored events by using their own personal vehicles. Despite their numerous requests to the Escuela Popular administration that their travel-related expenses be reimbursed, Defendants failed to reimburse these employees for the costs and mileage incurred during such travel in violation of California law.

97. Defendants could have provided Plaintiffs and Class Members with the actual tools for use on the job, including educational supplies necessary to fulfilling work-related tasks, or could have reimbursed employees for their actual expenses necessary to conduct the Defendants' academic mission. Defendants also could have reimbursed employees for work-related travel expenses. Instead, Defendants required Plaintiffs and Class Members to bear the burden of these expenses without reimbursement in violation of California law.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay Minimum Wages**

3 **[Cal. Labor Code, §§ 1182.12, 1194, 1194.2, 1197, 1198;**

4 **IWC Wage Order No. 4-2001, § 4]**

5 **(Brought by All Plaintiffs Against All Defendants)**

6 98. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
7 reference all previous paragraphs of this FAC.

8 99. California Labor Code sections 1182.12, 1194, 1197, and IWC Wage Order No. 4-
9 2001, section (4), make it unlawful for employers to pay hourly, non-exempt employees less than the
10 minimum wage fixed by California law.

11 100. California Labor Code section 1198 makes unlawful the employment of an employee
12 under conditions the IWC prohibits.

13 101. California Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a),
14 provide that an employer that has failed to pay its employees the legal minimum wage is liable to pay
15 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount
16 equal to the wages unpaid, and interest thereon at a rate of ten percent per annum under California
17 Labor Code section 218.6 .

18 102. At all times relevant time to this FAC, Defendants failed to pay minimum wages to
19 Plaintiffs and members of the Minimum Wage Class as required by California Labor Code sections
20 1182.12, 1194, 1197, and 1198, by having followed and by continuing to follow a policy and practice
21 of failing to pay Plaintiffs and members of the Minimum Wage Class at or above the California
22 minimum wage for many hours worked by Plaintiffs and members of the Minimum Wage Class,
23 including but not limited to: hours Defendants required, permitted, or suffered Plaintiffs and members
24 of the Minimum Wage Class to work from home or remotely in order to comply with their duties and
25 responsibilities as members of the teaching staff; hours that Defendants required, permitted, or
26 suffered Plaintiffs and members of the Minimum Wage Class to work late nights or weekend hours;
27 hours Defendants required, permitted, or suffered Plaintiffs and members of the Minimum Wage Class
28 to work in order to support school committees; hours that Defendants required, permitted, or suffered

1 Plaintiffs and members of the Minimum Wage Class to work in order to support off-campus school
2 events; hours Defendants required, permitted, or suffered Plaintiffs and members of the Minimum
3 Wage Class to work to attend mandatory school meetings; and hours Defendants required, permitted,
4 or suffered Plaintiffs and members of the Minimum Wage Class to work through unpaid meal and rest
5 periods.

6 103. At all times relevant to this FAC, Defendants knowingly and willfully failed to pay
7 Plaintiffs and members of the Minimum Wage Class minimum wages as required by California law.

8 104. As a direct and proximate result of Defendants' failure to pay minimum wages as
9 required by California law, Plaintiffs and members of the Minimum Wage Class sustained damages.

10 105. Pursuant to California Labor Code sections 1194, 1194.2, and 1197, Plaintiffs and
11 members of the Minimum Wage Class can recover from Defendants the unpaid balance of their
12 minimum wage compensation not paid to them by Defendants, as well as interest at a rate of ten
13 percent per annum under California Labor Code section 218.6, costs, attorneys' fees, and liquidated
14 damages in an amount equal to the wages unlawfully unpaid.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Pay Overtime Wages**

17 **[Cal. Labor Code, § 510, 1194, 1198; IWC Order No. 4-2001, § 3]**

18 **(Brought by All Plaintiffs Against All Defendants)**

19 106. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
20 reference all previous paragraphs of this FAC.

21 107. California Labor Code sections 510, 1194, and 1198, provide that non-exempt
22 employees are entitled to all overtime wages and compensation for hours worked and provide a private
23 right of action for the failure to pay all overtime compensation for overtime work performed.

24 108. More specifically, California Labor Code section 1198 makes unlawful the
25 employment of an employee under conditions the IWC prohibits. Moreover, California Labor Code
26 section 510 and IWC Wage Order No. 4-2001, section (3), require employers to compensate hourly,
27 non-exempt employees with overtime compensation paid at one and-one-half times the employee's
28 regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week

1 or for the first eight (8) hours worked on the seventh day of work, and overtime compensation paid at
2 twice the employee's regular hourly rate for hours worked in excess of twelve (12) hours in a day or
3 in excess of eight (8) hours in a day on the seventh day of work. Lastly, California Labor Code section
4 1194, subdivision (a), entitles an employee to recover in a civil action the unpaid balance of all
5 overtime compensation due but unpaid

6 109. At all times relevant to this FAC, Plaintiffs and members of the Overtime Class are
7 current and former employees entitled to the protections of California Labor Code sections 510, 1194,
8 and IWC Wage Order No. 4-2001.

9 110. At all times relevant to this FAC, Plaintiffs and members of the Overtime Class
10 regularly worked in excess of eight (8) hours in a day and/or in excess of forty (40) hours in a week.

11 111. At all times relevant time to this FAC, Defendants failed to pay overtime wages to
12 Plaintiffs and members of the Overtime Class as required by California Labor Code section 510 and
13 IWC Wage Order No. 4-2001, section (3), by having followed and by continuing to follow a policy
14 and practice of failing to pay Plaintiffs and members of the Overtime Class at or above the applicable
15 overtime rate required under California law for many hours worked by Plaintiffs and members of the
16 Overtime Class, including but not limited to: hours Defendants required, permitted, or suffered
17 Plaintiffs and members of the Overtime Class to work from home or remotely in order to comply with
18 their duties and responsibilities; hours that Defendants required, permitted, or suffered Plaintiffs and
19 members of the Overtime Class to work late nights or weekend hours; hours Defendants required,
20 permitted, or suffered Plaintiffs and members of the Overtime Class to work in order to support school
21 committees; hours that Defendants required, permitted, or suffered Plaintiffs and members of the
22 Overtime Class to work in order to support off-campus school events; hours Defendants required,
23 permitted, or suffered Plaintiffs and members of the Overtime Class to work to attend mandatory
24 school meetings; hours Defendants required, permitted, or suffered Plaintiffs and members of the
25 Overtime Class to work through unpaid meal and rest periods; and hours that Defendants failed to
26 track in time records.

27 112. Defendants committed and continue to commit the acts alleged in this FAC knowingly
28 and willfully.

113. As a direct and proximate result of Defendants' failure to pay overtime wages as required by California law, Plaintiffs and members of the Overtime Class sustained damages.

114. Pursuant to California Labor Code section 1194, subdivision (a), Plaintiffs and members of the Overtime Class can recover from Defendants unpaid overtime compensation, as well as interest thereon at a rate of ten percent per annum under California Labor Code section 218.6, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

Failure to Provide Required Meal Periods or Pay Missed Meal Period Wages

[Cal. Labor Code, §§ 226.7, 512, 1198; IWC Wage Order No. 4-2001, § 11]

(Brought by All Plaintiffs Against All Defendants)

115. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by reference all previous paragraphs of this FAC.

116. California Labor Code section 1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

117. California Labor Code section 226.7, subdivision (b), makes it unlawful for employers to require hourly, non-exempt employees to work during any meal period mandated by an applicable IWC Order.

118. California Labor Code section 512 and IWC Wage Order 4-2001 section 11, subsection (A), prohibit employers from employing a worker for more than five hours without a meal period of at least 30 minutes. California Labor Code section 512 also prohibits employers from employing a worker for more than 10 hours without a second meal period of at least 30 minutes.

119. Under both California Labor Code section 226.7, subdivision (b), and IWC Wage Order 4-2001 section 11, subsection (B), if an employer fails to provide an employee a meal period as required, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each workday that a meal period is not provided as required.

120. During the Relevant Time Period, Defendants failed to provide Plaintiffs and members of the Meal Period Class with a 30-minute, duty-free meal period for every five hours of work. Plaintiffs and members of the Meal Period Class routinely missed meal periods or had late, short, or

1 interrupted meal periods due to a heavy workload, and insufficient staffing. Lastly, Defendants
2 provided Plaintiffs and members of the Meal Period Class a fixed salary as part of their
3 misclassification scheme that resulted in creating the false appearance that compliant meal periods
4 were not necessary to track or provided.

5 121. At all times relevant to this FAC, Defendants failed to pay Plaintiffs and members of
6 the Meal Period Class meal period premium pay due for non-compliant meal periods, pursuant to
7 California Labor Code section 226.7, subdivision (c), and IWC Wage Order No. 4-2001, section (11),
8 subdivision (B).

9 122. At all times relevant to this FAC, Defendants knowingly and willfully failed to pay
10 Plaintiffs and members of the Meal Period Class premium pay for non-compliant meal periods as
11 required by California law.

12 123. As a direct and proximate result of Defendants' failure to pay premium pay for non-
13 compliant meal periods as required by California law, Plaintiffs and members of the Meal Period Class
14 sustained damages.

15 124. Pursuant to California Labor Code section 226.7, subdivision (c), and IWC Wage Order
16 No. 4-2001, section (11), subdivision (B), Plaintiffs and members of the Meal Period Class can recover
17 from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for
18 each workday that a compliant meal period was not provided, interest thereon at a rate of seven percent
19 per annum under California Civil Code section 3287, , and costs of suit.

20 **FOURTH CAUSE OF ACTION**

21 **Failure to Provide Required Rest Periods or Pay Missed Rest Period Wages**

22 **[Cal. Labor Code, §§ 226.7, 1198; IWC Wage Order No. 4-2001, § 12]**

23 **(Brought by All Plaintiffs Against All Defendants)**

24 125. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
25 reference all previous paragraphs of this FAC.

26 126. California Labor Code section 1198 makes unlawful the employment of an employee
27 under conditions the IWC prohibits.

28 127. California Labor Code section 226.7, subdivision (a), prohibits an employer from
26.

1 requiring an employee to work during any rest break mandated by an applicable Industrial Wage
2 Order. IWC Wage Order 4-2001 section 12, subsection (A), requires employers to authorize and
3 permit employees who work three and one half or more hours in a day to take a paid rest break of at
4 least 10 minutes for every four hours worked or major fraction thereof, which insofar as practicable
5 shall be in the middle of each work period.

6 128. Under both California Labor Code section 226.7, subdivision (b), and IWC Wage Order
7 4-2001 section 12, subsection (B), if an employer fails to provide an employee a rest break as required,
8 the employer must pay the employee one hour of pay at the employee's regular rate of compensation
9 for each workday that a rest break is not provided as required.

10 129. At all times relevant to this FAC, Defendants required Plaintiffs and members of the
11 Rest Period Class to work four (4) or more hours without authorizing or permitting a ten (10) minute
12 rest period per each four (4) hour period worked or major fraction thereof in violation of California
13 law.

14 130. At all times relevant to this FAC, Defendants did not provide Plaintiffs and members
15 of the Rest Period Class with a duty-free rest period of at least 10 minutes for every four hours of work
16 or major fraction thereof. Plaintiffs and members of the Rest Period Class were unable to take
17 compliant rest periods for the same reasons they could not take compliant meal periods.

18 131. At all times relevant to this FAC, Defendants knowingly and willfully failed and
19 continue to fail to pay Plaintiffs and members of the Rest Period Class premium pay for non-compliant
20 rest periods as required by California law.

21 132. As a direct and proximate result of Defendants' failure to pay premium pay for non-
22 compliant rest periods as required by California law, Plaintiffs and members of the Rest Period Class
23 sustained damages.

24 133. Pursuant California Labor Code section 226.7, subdivision (c), and IWC Wage Order
25 4-2001, section (12), subdivision (B), Plaintiffs and members of the Rest Period Class can recover
26 from Defendants one additional hour of pay at the employee's regular hourly rate of compensation for
27 each work day that a compliant rest period was not provided, including interest thereon at a rate of
28 seven percent per annum under California Civil Code section 3287, and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Labor Code §§ 204, 226; IWC Wage Order No. 4-2001, § 7]**

4 **(Brought by All Plaintiffs Against All Defendants)**

5 134. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
6 reference all previous paragraphs of this FAC.

7 135. California Labor Code section 226, subdivision (a), provides that every employer, like
8 Defendants, must provide each of their employees, like Plaintiffs and members of the Wage Statement
9 Penalty Class, with an accurate itemized wage statement in writing detailing the following
10 information: (1) gross wages earned; (2) total hours worked by the employee, except for any employee
11 whose compensation is solely based on a salary and who is exempt from payment of overtime under
12 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the
13 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
14 basis; (4) all deductions, provided that all a deductions made on written orders of the employee may
15 be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
16 which the employee is paid; (7) the name of the employee and his or her social security number, except
17 that by January 1, 2008, only the last four digits of his or her social security number or an employee
18 identification number other than a social security number may be shown on the itemized statement;
19 (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in
20 effect during the pay period and the corresponding number of hours worked at each hourly rate by the
21 employee.

22 136. California Labor Code section 226, subdivision (e), provides that an employee who
23 suffers injury as a result of a knowing and intentional failure by an employer to comply with section
24 226, subdivision (a), may recover the greater of actual damages or the civil penalties designated by
25 statute of \$50 for the initial pay period.

26 137. California Labor Code section 226, subdivision (e)(2)(B), provides that an employee is
27 deemed to suffer injury if the wage statement fails to accurately and completely provide certain
28 information and the employee cannot promptly and easily determine such information from the wage

1 statement alone. In relevant part, California Labor Code section 226, subdivision (e)(2)(B), provides
2 that an employee is deemed to suffer injury if the wage statement does not accurately and completely
3 state the total number of hours worked by the employee, all applicable hourly rates in effect during
4 the pay period, and the corresponding number of hours worked at each hourly rate.

5 138. Defendants intentionally and willfully failed to provide employees with complete and
6 accurate wage statements because the wage statements provided by Defendants failed to accurately
7 detail Plaintiffs' and members of the Wage Statement Penalty Class's total hours worked and the
8 corresponding hourly rates as a result of Defendants' failure to pay the outstanding wages alleged in
9 this FAC.

10 139. As a direct and proximate result of Defendants' failure to provide Plaintiffs and
11 members of the Wage Statement Penalty Class with accurate itemized wage statements as required by
12 California law, Plaintiffs and members of the Wage Statement Penalty Class suffered injury and
13 damages.

14 140. Specifically, Plaintiffs and members of the Wage Statement Penalty Class were injured
15 by Defendants' intentional violation of California Labor Code section 226, subdivision (a), because
16 they were denied both their legal right to receive and their protected interest in receiving, accurate,
17 itemized wage statements under California Labor Code section 226, subdivision (a). Plaintiffs and
18 members of the Wage Statement Penalty Class were injured by Defendants' intentional violation of
19 California Labor Code section 226, subdivision (a), because it has caused confusion over whether they
20 received from Defendants all of the wages owed to them, in addition to their difficulty and expense in
21 reconstructing pay records and making mathematical computations to analyze whether the wages paid
22 to them did in fact compensate them for all hours worked.

23 141. Plaintiffs and members of the Wage Statement Penalty Class can recover from
24 Defendants the greater of their actual damages caused by Defendants' failure to comply with
25 California Labor Code section 226, subdivision (a), or an aggregate penalty not exceeding four
26 thousand dollars per employee.

27 142. California Labor Code section 226, subdivision (h), authorizes courts to issue
28 injunctive relief to remedy violations of section 226, subdivision (a). Plaintiffs and members of the

1 Wage Statement Penalty Class are entitled to injunctive relief under the governing legal standards and
2 are entitled to an order enjoining Defendants: (i) to immediately begin providing to Plaintiffs and
3 current employee members of the Wage Statement Penalty Class itemized wage statements containing
4 all of the information required to be detailed by California Labor Code section 226, subdivision (a);
5 and (ii) to immediately provide to all Plaintiffs and members of the Wage Statement Penalty Class the
6 information required be disclosed by California Labor Code section 226, subdivision (a), dating back
7 to those employees' beginning of employment or to the start of the applicable limitations period,
8 whichever is further back in time.

9 **SIXTH CAUSE OF ACTION**

10 **Failure to Pay All Wages at Termination**

11 **[Cal. Labor Code, §§ 201, 202, 203]**

12 **(Brought by All Plaintiffs Against All Defendants)**

13 143. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
14 reference all previous paragraphs of this FAC.

15 144. California Labor Code sections 201 and 202 provide that if an employer discharges an
16 employee, then the wages earned and unpaid at the time of discharge are due and payable immediately,
17 and that if an employee voluntarily leaves his or her employment, his or her wages shall become due
18 and payable not later than seventy-two (72) hours thereafter unless the employee has given seventy-
19 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to
20 his or her wages at the time of quitting.

21 145. California Labor Code section 203 provides that if an employer willfully fails to pay
22 wages owed in accordance with sections 201 and 202, then the wages of the employee shall continue
23 as a penalty from the due date, and at the same rate until paid or until an action is commenced, but the
24 wages shall not continue for more than thirty (30) days.

25 146. The unpaid wages owed to Plaintiffs and members of the Waiting Time Penalty Class
26 at the time of termination of their employment include unpaid regular, overtime, and double time
27 wages, as set forth in this FAC.

28 147. By failing to compensate Plaintiffs and members of the Waiting Time Penalty Class

1 upon separation, including but not limited to Defendants' failure to properly pay Plaintiffs and
2 members of the Waiting Time Penalty Class wages for all hours worked when due, overtime wages,
3 and minimum wages, Defendants have willfully failed and continue to fail to pay all accrued wages
4 and other compensation to Plaintiffs and members of the Waiting Time Penalty Class in accordance
5 with California Labor Code sections 201 and 202.

6 148. As a direct and proximate result of Defendants' failure to pay all wages due upon
7 separation, Plaintiffs and members of the Waiting Time Penalty Class have suffered damages.

8 149. Plaintiffs and members of the Waiting Time Penalty Class can recover from Defendants
9 the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant
10 to California Labor Code section 203.

11 **SEVENTH CAUSE OF ACTION**

12 **Failure to Indemnify for Necessary Expenses**

13 **[Cal. Labor Code, § 2802]**

14 **(Brought by All Plaintiffs Against All Defendants)**

15 150. Plaintiffs, on behalf of themselves and Class Members, re-allege and incorporate by
16 reference all previous paragraphs of this FAC.

17 151. California Labor Code section 2802, subdivision (a), requires an employer to indemnify
18 an employee for all necessary expenditures or losses incurred by the employee in direct consequence
19 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

20 152. Defendants have failed to indemnify Plaintiffs for all business expenses and/or losses
21 incurred in direct consequence of the discharge of their duties. More specifically, Plaintiffs needed to
22 purchase various educational materials for their students, including but not limited to: posters; pens;
23 erasers; highlighters; notebooks; hand sanitizers; cleaning supplies; computer accessories; binders;
24 staplers; and desktop hole punchers.

25 153. Plaintiffs continuously asked for reimbursement for the educational materials that
26 Defendants required them to purchase, but the Escuela Popular's administration continuously turned
27 down their requests.

28 154. By requiring Plaintiffs and members of the Business Expenses Reimbursement Class

1 to pay for work-related expenses without reimbursement, Defendants have violated and continue to
2 violate California Labor Code section 2802 and IWC Wage Order No. 4-2001, section (9).

3 155. Defendants have intentionally and willfully failed to reimburse Plaintiffs and members
4 of the Business Expenses Reimbursement Class for all necessary business-related expenses and costs.

5 156. As a direct and proximate result of Defendants' failure reimburse Plaintiffs and
6 members of the Business Expenses Reimbursement Class for all necessary business-related expenses
7 and costs as required by California law, Plaintiffs and members of the Business Expenses
8 Reimbursement Class sustained damages.

9 157. Plaintiffs and members of the Business Expenses Reimbursement Class can recover
10 from Defendants their business-related expenses and costs incurred during the course and scope of
11 their employment plus interest accrued from the date on which the employee incurred the necessary
12 expenditures at the same rate as judgments in civil actions in the State of California, including interest
13 thereon at a rate of seven percent per annum under California Civil Code section 3287, reasonable
14 attorneys' fees, and costs of suit.

15 **EIGHTH CAUSE OF ACTION**

16 **Unfair Business Practices**

17 **[Cal. Bus. & Prof. Code, § 17200 et seq.]**

18 **(Brought by All Plaintiffs Against All Defendants)**

19 158. Plaintiffs, on behalf of themselves and members of the UCL Class, re-allege and
20 incorporate by reference all previous paragraphs of this FAC.

21 159. As alleged in this FAC, Defendants' conduct, has been and continues to be unfair,
22 unlawful, and harmful to Plaintiffs and members of the UCL Class, and to the general public. Plaintiffs
23 seek to enforce important rights affecting the public interest within the meaning of Code of Civil
24 Procedure section 1021.5.

25 160. As alleged in this FAC, Defendants' actions violate California law and constitute
26 unlawful business acts and practices in violation of California Business & Professions Code sections
27 17200 et seq.

28 161. A violation of California Business & Professions Code section 17200 et seq. may be

1 predicated on the violation of any state or federal law. In the present case, Defendants' policy and
2 practice of not paying all regular, overtime, and double time wages due to Plaintiffs and members of
3 the UCL Class violates California Labor Code sections 510, 1194, and 1198; Defendants' policy and
4 practice of requiring Plaintiffs and members of the UCL Class to work through their meal and rest
5 periods without paying them proper compensation violates California Labor Code sections 226.7 and
6 512, subdivision (a); Defendants' policy of not timely paying Plaintiffs and members of the UCL Class
7 all wages due to them during their employment violates California Labor Code section 204;
8 Defendants' policy and practice of not timely paying all wages owed to Plaintiffs and Class Members
9 upon resignation or termination violates California Labor Code sections 201, 202, and 203;
10 Defendants' policy and practice of not fully reimbursing Plaintiffs and members of the UCL Class for
11 necessary business-related expenses and costs incurred during their employment violates California
12 Labor Code sections 2800 and 2802; and Defendants' policy and practice of failing to provide accurate
13 itemized wage statements violates California Labor Code section 226. As alleged in this FAC,
14 Defendants' unlawful business acts and practices, involve, but not necessarily limited to the loss of
15 money and/or property.

16 162. Plaintiffs and members of the UCL Class have been personally injured. Pursuant to
17 California Business & Professions Code sections 17200 et seq., Plaintiffs and the members of the UCL
18 Class are entitled to: restitution from Defendants of the wages withheld and retained by Defendants
19 during a period that commences four years prior to the filing of this complaint; a permanent injunction
20 requiring Defendants to pay all outstanding wages due to Plaintiffs and members of the UCL Class;
21 an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other
22 applicable laws; and an award of costs.

23 **NINTH CAUSE OF ACTION**

24 **Private Attorneys' General Act**

25 **[Cal. Labor Code, §§ 2698 et seq.]**

26 **(Against All Defendants and DOES 1-10)**

27 163. Plaintiffs, on behalf of themselves, Class Members, other aggrieved employees and the
28 State of California re-allege and incorporate by reference all previous paragraphs of this FAC.

1 164. Defendants have committed several Labor Code violations against Plaintiffs, Class
2 Members, and other aggrieved employees. Plaintiffs, as “aggrieved employees” within the meaning
3 of Labor Code section 2698 et seq., acting on behalf of themselves and other aggrieved employees,
4 bring this representative action against Defendants to recover the civil penalties due to Plaintiffs, the
5 Class Members, other aggrieved employees, and the State of California according to proof pursuant
6 to Labor Code section 2699, subdivisions (a) and (f), including, but not limited to: (1) \$100.00 for
7 each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation
8 or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each
9 employee, plus 25 percent of the amount unlawfully withheld; (2) \$100.00 for each initial violation
10 and \$250.00 for each subsequent violation pursuant to Labor Code section 1197.1; (3) \$250.00 for
11 each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code section
12 226.3 per employee per pay period; (4) \$50.00 for each initial violation for each underpaid employee
13 for each pay period for which the employee was underpaid in addition to an amount sufficient to
14 recover underpaid wages and \$100.00 for each underpaid employee for each pay period for which the
15 employee was underpaid in addition to an amount sufficient to recover underpaid wages pursuant to
16 Labor Code section 558; (5) \$500 for failure to maintain accurate and complete records required by
17 Labor Code section 1174; and/or (6) \$100.00 for each initial violation and \$200.00 for each subsequent
18 violation per employee per pay period for those violations of the Labor Code for which no civil penalty
19 is specifically provided, based on the following Labor Code violations:

- 20 a. Defendants violated Labor Code sections 204, 510, 558, 1194, and 1198 by
21 failing to pay Plaintiffs and other aggrieved employees all overtime
22 compensation earned;
- 23 b. Defendants violated Labor Code sections 1194, 1194.2, and 1197 by failing to
24 pay Plaintiffs and other aggrieved employees the statutory minimum wage for
25 all hours worked;
- 26 c. Defendants violated Labor Code sections 226.7, 512, 516, and 558 by failing to
27 authorize and permit all legally required meal and rest periods and failing to
28 pay meal and rest period premiums to Plaintiffs and other aggrieved employees;

- d. Defendants violated Labor Code section 226 by failing to furnish Plaintiffs and other aggrieved employees with accurate and compliant itemized wage statements;
- e. Defendants violated Labor Code section 204 by failing to pay Plaintiffs and other aggrieved employees all earned wages at least twice during each calendar month;
- f. Defendants violated Labor Code section 1174 by failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees;
- g. Defendants violated Labor Code sections 201, 202 and 203 by failing to timely pay all final wages due to Plaintiffs and other aggrieved employees; and
- h. Defendants violated Labor Code section 2802 by failing to indemnify necessary expenditures due to Plaintiffs and other aggrieved employees.

165. On August 14, 2020, counsel for Plaintiffs notified Defendants via certified mail, and notified the LWDA via its website, of Defendants' violations of the California Labor Code and Plaintiffs' intent to bring an action for civil penalties under California Labor Code section 2698 et seq. with respect to violations of the California Labor Code. A true and correct copy of Plaintiffs' letter is attached hereto as **Exhibit 1**. Now that at least sixty-five days have passed from Plaintiffs notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiffs have exhausted the administrative requirements for bringing an action under the PAGA with respect to these violations.

REQUEST FOR A JURY TRIAL

166. Plaintiffs, on behalf of themselves, and similarly situated employees currently or formerly employed in California by Defendants, hereby demand a jury trial on all causes of action and claims so triable.

PRAYER FOR RELIEF

167. Plaintiffs, on behalf of themselves and all other members of the general public similarly situated, pray for relief and judgment against Defendants, as follows:

- a. For certification of the proposed Classes and any other appropriate subclasses

1 under California Code of Civil Procedure section 382;

- 2 b. For appointment of SUSANA LUNA, CLAUDIA UCHICUA and LAURA
3 PADILLA as the class representatives;
- 4 c. For appointment of Macias Rodriguez LLP as class counsel for all purposes;
- 5 d. For an award of compensatory damages, including but not limited to, lost and
6 unpaid wages;
- 7 e. For an award of statutory penalties provided by law, including but not limited
8 to those in California Labor Code sections 203 and 226, subdivision (e);
- 9 f. An award of unpaid premium wages pursuant to California Labor Code 226.7,
10 subdivision (c);
- 11 g. For liquidated damages under Labor Code section 1194.2, in an amount equal
12 to the unpaid minimum wages;
- 13 h. For declaratory relief, enjoining Defendants' practices as being unlawful and
14 unfair business practices within the meaning of the California Business and
15 Professions Code, and declaring Defendants have unlawfully treated Plaintiffs
16 and Class Members by failing to pay all wages in violation of California law,
17 failing to provide meal and rest periods or compensation in lieu thereof, failing
18 to provide accurate itemized wage statements, failing to provide wages due at
19 termination, and failing to reimburse necessary business expenses;
- 20 i. For restitution to Plaintiffs and members of the UCL Class of all money and/or
21 property unlawfully acquired by Defendants by means of any acts or practices
22 declared by this Court to be in violation of Business and Professions Code
23 section 17200 et seq.;
- 24 j. For an order requiring Defendants to restore and disgorge all profits and other
25 appropriate equitable relief authorized by California Business and Professions
26 Code section 17200 et seq.;
- 27 k. For an award of civil penalties due to Plaintiffs, other aggrieved employees, and
28 the State of California according to proof pursuant to Labor Code section 2699,

subdivision (a) and (f), including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code section 1197.1; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code section 226.3 per employee per pay period; (4) \$50.00 for each initial violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages and \$100.00 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages pursuant to Labor Code section 558; (5) \$500 for failure to maintain accurate and complete records required by Labor Code section 1174; and/or (6) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited above;

- l. For pre-judgment interest and post-judgment interest on all sums awarded;
- m. Costs of suit;
- n. For reasonable attorneys' fees and litigation expenses to the extent permitted by law, including, but not limited to, Code of Civil Procedure section 1021.5 and Labor Code sections 218.5, 226, subdivision (e), and 1194, subdivision (a).
- o. For such other relief as the Court deems just and proper.

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1 Dated: November 25, 2020

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6 JOSE MACIAS, JR
7 HECTOR J. RODRIGUEZ
8 TRAVIS M. ADAMS
9 **MACIAS RODRIGUEZ LLP**

10 Attorneys for Plaintiffs
11 SUSANA LUNA, CLAUDIA UCHICUA and
12 LAURA PADILLA
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