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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

DEAN PARSONS, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

LA SIERRA UNIVERSITY, a California Non-
Profit Corporation,

Defendant.

CASE NO. CVRI2000104

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) **Failure to Pay Wages for All Hours Worked** (Cal. Labor Code §§ 226.2, 1194, 1194.2; IWC Wage Order No. 4-2001, § 4);
- (2) **Failure to Authorize and Permit Paid Rest Breaks and Pay Premium Pay** (Cal. Labor Code §§ 226.2, 226.7; IWC Wage Order No. 4-2001, §§ 4, 12);
- (3) **Failure to Issue Accurate Itemized Wage Statements** (Cal. Labor Code §§ 226(a) and (e); 226.2);
- (4) **Failure to Pay Compensation Due Upon Discharge From Employment** (Cal. Labor Code §§ 201-203);
- (5) **Failure to Reimburse for Business-Related Expenses** (Cal. Labor Code § 2802); and
- (6) **Unfair, Unlawful, and/or Fraudulent Business Practices** (Cal. Bus. & Prof. Code § 17200 *et seq.*).
- (7) **Civil Penalties under Private Attorneys General Act** (Cal. Labor Code § 2699)

DEMAND FOR JURY TRIAL

1 Plaintiff Dean Parsons ("Plaintiff"), on behalf of himself and all others similarly situated,
2 complains and alleges the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages for
5 unpaid wages, unreimbursed business expenses, unpaid premium pay, statutory penalties, interest, and
6 other equitable and injunctive relief, and reasonable attorneys' fees and costs under California Labor Code
7 ("Labor Code") §§ 226.2, 1194, 1194.2, 226.7, 226(e), 201-203, 2802, and IWC Wage Order ("Wage
8 Order") No. 4-2001 §§ 4, 12, and restitution under California's Unfair Competition Law ("UCL"),
Business & Professions Code §§ 17200 *et seq.*

9 2. Plaintiff brings this action on behalf of himself and all other similarly situated individuals
10 currently and formerly employed in California by La Sierra University ("Defendant") as adjunct
11 instructors or in a similar capacity ("Adjunct Class Members" or "Class Members") from four years prior
12 to the filing of this Complaint through to the trial date ("Class Period"). Defendant's violations of
13 California's wage and hour laws, as described more fully below, have been ongoing for at least the past
four years, and are continuing at present.

14 3. During the Class Period, Plaintiff and Class Members were non-exempt employees
15 because they did not earn the monthly equivalent of at least two times the state minimum wage for full-
16 time employment as required by Labor Code § 515(a) and Wage Order No. 4-2001 § 1, and were paid on
17 a piece-rate basis or "Course Rate" – a set amount for each course taught during an academic quarter.
18 However, Defendant failed to pay Class Members at least minimum wage for non-productive work
19 performed prior to the start of classes each academic term in violation of Labor Code §§ 226.2 and 1194,
20 and Wage Order No. 4-2001, § 4. In addition, upon information and belief, Defendant calculated the
21 Course Rate based on a formula that estimated Class Members worked 2.25 hours for each credit hour.
22 However, Class Members routinely worked more than 2.25 hours for each credit hour, and as such
performed uncompensated work.

23 4. During the Class Period, Defendant failed to pay Class Members for their rest breaks
24 separately and apart from the Course Rate and failed to pay premium pay, in violation of Labor Code §§
226.2, 226.7 and Wage Order No. 4-2001 § 12.

25 5. Even if not piece rate workers, as non-exempt employees, Class Members were entitled to
26 be permitted and authorized to take off-duty rest breaks under Labor Code § 226.7 and Wage Order No.
27 4-2001 § 12. However, Defendant failed to authorize and permit Class Members to take off-duty rest
28

1 breaks as required under Wage Order No. 4-2001 § 12, and failed to pay premium pay for missed rest
2 breaks in violation of Labor Code § 226.7 and Wage Order No. 4-2001 § 12.

3 6. During the three years prior to the filing of the Complaint to the trial date (“Waiting Time
4 Penalties Class Period”), Class Members were employed on a contract-by-contract basis and were
5 discharged at the end of each contract. However, Defendant failed to pay Class Members their final wages
6 on the same day that they were discharged from employment. Additionally, as a result of failing to pay
7 wages for non-productive time and/or all hours worked, and failing to pay for rest break time, as well as
8 failure to pay premium pay for missed breaks, Defendant failed to pay Class Members all wages due upon
separation from employment in violation of Labor Code §§ 201-203.

9 7. During the one year prior to the filing of the Complaint through to the trial date (“Wage
10 Statement Class Period”) Defendant also knowingly and intentionally failed to provide Plaintiff and Class
11 Members with accurate itemized wage statements in violation of Labor Code §§ 226(a), (e) and 226.2,
12 including but not limited to, failing to list the total hours worked, the applicable hourly rate in effect during
13 each pay period, and piece-rate information. Plaintiff and Class Members suffered injury as a result of
14 Defendant’s knowing and intentional violation of Labor Code § 226(a). As a result, Class Members are
15 entitled to statutory penalties as provided for under Labor Code § 226(e), as well as reasonable attorneys’
fees and costs.

16 8. During the Class Period, Plaintiff and Class Members incurred business expenses in direct
17 consequence of the discharge of their duties, including home internet, home or cellular phone expenses,
18 ink toner/cartridges and paper and other expenses associated with working from home, for which
Defendant did not reimburse them, in violation of Labor Code § 2802.

19 9. Plaintiff also brings this action for unreimbursed expenses on behalf of himself and all
20 other similarly situated individuals currently and formerly employed in California by Defendant
21 (“Unreimbursed Expenses Class Members” or “UE Class Members”) from March 4, 2020 through to the
22 trial date (“Unreimbursed Expense Class Period”). During the Unreimbursed Expense Class Period,
23 Plaintiff and UE Class Members incurred business expenses in direct consequence of the discharge of
24 their duties, including but not limited to home internet, home or cellular phone expenses, ink
25 toner/cartridges and paper and other expenses associated with working from home, for which Defendant
did not reimburse them, in violation of Labor Code § 2802.

26 10. Defendant’s violations of California’s wage and hour laws, as described more fully below,
27 have been ongoing for at least the past four years, and are continuing at present.

11. As a result of the above Labor Code violations, Defendant committed unfair, unlawful, and fraudulent business practices, in violation of the UCL.

12. Plaintiff also brings this action as a representative action under the California Labor Code's Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 *et seq.*, for civil penalties on behalf of himself and other current and former adjunct instructors of Defendant ("Adjunct Aggrieved Employees") for violations of Labor Code §§ 226(a), 226.2, 226.2(a), 226.7, 512, 1194, 2802 and IWC Wage Order No. 4-2001 §§ 4, 11, and 12.

13. Plaintiff also brings this a PAGA Action for civil penalties on behalf of himself and all other individuals employed by La Sierra in California (“Aggrieved Employees”) during the PAGA Period for violation of Labor Code § 2802.

14. The “PAGA Period” is from October 20, 2019 through to the trial date.

PARTIES

15. Plaintiff is a resident of Yucaipa who has been employed by Defendant as an adjunct instructor through six separate and distinct contracts since approximately January 2019. During his employment, Plaintiff has been subject to Defendant's unlawful conduct described herein.

16. Defendant is a non-profit postsecondary education institution located in Riverside.

JURISDICTION

17. This Court has jurisdiction over Plaintiff and Adjunct Class Members' claims for failure to pay wages separately and apart from the piece and/or failure to pay wages for all hours worked prior to the first day of classes each academic term and outside of their employment contracts under Labor Code §§ 226.2 and 1194 and Wage Order No. 4-2001 § 4.

18. This Court has jurisdiction over Plaintiff and Adjunct Class Members' claims for failure to pay Adjunct Class Members for their rest breaks separately and apart from the piece, failure to authorize and permit them to take off-duty rest breaks, and failure to pay premium pay for missed or unpaid rest breaks, under Labor Code §§ 226.2 and 226.7 and Wage Order No. 4-2001 §§ 4, 12.

19. This Court has jurisdiction over Plaintiff and Adjunct Class Members' claims for statutory penalties under Labor Code §§ 226(a), (e) and 226.2.

20. This Court has jurisdiction over Plaintiff and Adjunct Class Members' claims for compensation due upon discharge from employment under Labor Code §§ 201-203.

21. This Court has jurisdiction over Plaintiff, Adjunct Class Members and Unreimbursed Expense Class Members' claims for reimbursement of business expenses under Labor Code § 2802.

22. This Court has jurisdiction over the claims for restitution arising from Defendant's labor code violations under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

23. This Court has jurisdiction over the claims for declaratory and injunctive relief under the UCL, Bus. & Prof. Code §§ 17200 *et seq.*

24. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code § 2699. On October 20, 2020, Plaintiff provided his PAGA Notice pursuant to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and Defendant. The LWDA has provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intention to investigate or not investigate any other claims alleged in the PAGA Notice. Plaintiff has therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code § 2699.

VENUE

25. Venue is proper in the County of Riverside pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. Defendant is California non-profit corporation with its headquarters located in Riverside. Venue is therefore proper in Riverside. Defendant operates within California and does business within Riverside. The unlawful acts alleged herein have a direct effect on Plaintiff and all employees within the State of California and Riverside County.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

A. Defendant's Business and Adjunct Class Members' Role in Defendant's Business Operations

26. Defendant is a post-secondary education provider that offers bachelors, masters and doctoral programs, at its California campus location and online. The programs and courses are scheduled based on three academic quarters (fall, spring, winter) and summer sessions. Defendant employs Class Members as adjunct instructors to teach the courses offered at its campus and online.

27. During the Class Period, prior to the start of each term, Defendant issued Class Members uniform Contract Teaching Agreements that set out the terms of Class Members employment including the course the Class Member was assigned to teach; the start date and end date of the course (“Contract Period”); and the flat per course compensation for teaching the assigned course.

B. Adjunct Class Members Were Non-Exempt Piece Rate Employees

28. During the Class Period, Plaintiff and Class Members were non-exempt employees under California law because they did not earn at least the monthly salary equivalent of two times the California minimum wage for full-time employment – a minimum amount required for an employee in California to be considered exempt. *See* Wage Order No. 4-2001, § 1(A).

1 29. Additionally, Plaintiff and Class Members were non-exempt piece rate workers because
2 from the beginning of the Class Period and until approximately Fall 2020, they were paid based on a piece
3 rate, where the “piece” of work was teaching a specified Course. The course rate pay was standardized
4 and only varied based on objective criteria such as the experience and education level of an instructor.
5 Moreover, Class Members’ compensation could be reduced by being prorated based on the number of
6 students enrolled in the course. This is consistent with a piece-rate compensation system and not a salary.

7 30. As a result, during the Class Period, as alleged in further detail below, Defendant was
8 required to comply with California’s wage and hour laws, including but not limited to, the obligation to
9 pay Class Members for nonproductive time and rest break time separate and apart from the piece rate, and
10 to issue accurate itemized wage statements containing entries for, including but not limited to, actual hours
11 worked during each pay period, applicable hourly rate in effect during each pay period, and piece-rate
12 information, pursuant to Labor Code §§ 226.2, 226.7, 226(a), (e) and Wage Order No. 4-2001, §§ 4, 12.

13 31. Even if Class Members are not considered piece-rate, they are non-exempt under the salary
14 basis test of the Wage Order No. 4-2001, § 1(A)(3)(d), and therefore entitled to certain protections under
15 the labor code, including but not limited to be paid for all hours worked, to be permitted and authorized
16 to take compliant rest breaks, and to receive accurate itemized wage statements containing entries for,
17 including but not limited to, total hours worked and applicable hourly rate in effect during each pay period,
18 pursuant to Labor Code §§ 1194, 1194.2, 512, 226.7, 226(a), (e) and Wage Order No. 4-2001, §§ 4, 12.

19 ***C. Defendant Failed to Pay Adjunct Class Members for All Hours Worked***

20 32. During the Class Period, although Defendant employed Class Members pursuant to
21 Contract Teaching Agreements that began on the first day of classes, Defendant required and/or expected
22 Adjunct Class Members to perform work prior to the first day of classes, including but not limited to, to
23 prepare syllabi and other course materials.

24 33. As their Contract Teaching Agreements began on the first day of classes and compensation
25 set out in the contracts only covered the period of the contract, Defendant did not pay Class Members
26 anything for the hours spent working prior to the first day of classes and outside the period of their
27 employment contracts, as required under Labor Code §§ 1194, 1194.2, 226.2 and Wage Order No. 4-
28 2001, § 4.

 34. In addition, the formula Defendant used to calculate the Course Rate was based on its
estimate that Class Members worked 2.25 hours per credit hour, yet Class Members routinely worked
more than 2.25 hours per credit hour.

1 ***D. Defendant Violated California's Rest Break Laws***

2 35. Because Class Members are non-exempt piece-rate workers, pursuant to Labor Code §§
3 226.2 and 226.7 Defendant was required to permit and authorize them to take a paid 10-minute for every
4 3.5 hours of work, and to pay them separately and hourly, at their average hourly rate, for their rest break
5 time.

6 36. During the Class Period, Class Members routinely worked at least 3.5 hours or more on
7 any given day because Defendant scheduled them to teach for 3.5 hours or longer, and/or because
8 Defendant scheduled them to teach shorter classes but required and/or expected them to arrive prior to
9 start of class and to remain after class to answer students' questions and/or hold office hours, which
10 resulted in Class Members working 3.5 hours or longer in a row.

11 37. Defendant also had policies and/or practices in place which impeded Class Members'
12 ability to take off-duty rest breaks during these times, including the policy and/or practice of requiring
13 Class Members to be available to students during class, as well as before and after class as alleged in the
14 previous paragraph.

15 38. Defendant knew or should have known that Class Members worked 3.5 hours or more, yet
16 failed to pay them at their average hourly rate for their time spent on rest breaks separately and apart from
17 the piece, thereby triggering an obligation to make premium payments to Class Members under Labor
18 Code § 226.7 and Wage Order No. 4-2001, § 12, which Defendant also did not pay.

19 39. Defendant also knew or should have known that Class Members were impeded from taking
20 off-duty rest breaks. Even if Class Members are not piece-rate workers, Defendant was required but failed,
21 as alleged above, to permit and authorize them to take off-duty rest breaks for shifts of 3.5 hours or longer,
22 pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12, thereby triggering an obligation to
23 make premium payments under Labor Code § 226.7 and Wage Order No. 4-2001, § 12(B), which it also
24 did not pay.

25 ***E. Defendant Violated California's Meal Period Laws***

26 40. During the PAGA Period, Adjunct Aggrieved Employees routinely worked shifts of five
27 hours or more, including teaching classes that were scheduled to meet for 5 hours, or working shifts that
28 were 5 hours or longer. Until the fall of 2020, Defendant did not maintain a compliant meal break policy
applicable to Adjunct Aggrieved Employees and as a matter of practice did not provide them with off-
duty meal periods because it expected and/or required them to arrive early to arrive early to prepare for
class, and to be available to students before, during, and after class. As a result, Adjunct Aggrieved

1 Employees were not relieved of all duties for at least 30 minutes before the end of their fifth hour of work,
2 as required under Labor Code § 512(a) and Wage Order No. 4-2001, § 11.

3 41. Thus, Defendant failed to provide compliant meal breaks in accordance with Labor Code
4 § 512 and Wage Order No. 4-2001, § 11(A), thereby triggering an obligation to make premium payments
5 to Adjunct Aggrieved Employees pursuant to Labor Code § 226.7. However, Defendant did not pay
6 premium pay for missed meal breaks as required under Labor Code § 226.7.

7 ***E. Defendant Failed to Issue Accurate Itemized Wage Statements***

8 42. During the Wage Statement Class Period, Defendant was required to issue accurate
9 itemized wage statements to Plaintiff and Class Members semimonthly or at the time of each payment of
10 wages containing (1) gross wages earned pursuant to subdivision (a)(1) of Labor Code § 226(a); (2) total
11 number of hours worked during each period, pursuant to subdivision (a)(2) of § 226(a); (3) net wages
12 earned pursuant to subdivision (a)(5) of Labor Code § 226(a); (4) all applicable hourly rates in effect
13 during the pay period and corresponding number of hours worked pursuant to subdivision (a)(9) of Labor
14 Code § 226(a).

15 43. Additionally, because Class Members were piece-rate workers, Defendant was also
16 required to furnish wage statements to them that contained, including but not limited to, the following
17 information: the number of piece-rate units earned and any applicable piece rate; compensable rest
18 periods, the rate of compensation, and gross wages paid for those rest break periods; and hours of
19 nonproductive time, the rate of compensation, and gross wages paid for nonproductive time during the
20 pay period pursuant to Labor Code §§ 226(a)(3) and 226.2(a).

21 44. During the Wage Statement Class Period, Defendant issued Class Members wage
22 statements on a bi-weekly basis. However, rather than issue Class Members accurate itemized wage
23 statements showing the actual hours worked, Defendant issued wage statements that contained an entry
24 in the hours worked column that was Defendant's estimate of the hours worked by the Class Members.

25 45. In addition, Defendant issued Class Members wage statements that failed to include an
26 applicable hourly rate, and the number of piece-rates earned and the applicable piece rate. Rather,
27 Defendant issued Plaintiff and Class Members with wage statements that contained in the earnings column
28 the total amount paid.

46. Defendant knew that it did not track the actual hours worked by the Class Members, that
the number it included on its wage statements for hours worked was only an estimate, and that it did not
include an entry of an applicable hourly rate. Moreover, Defendant knew that it classified Class Members
as professional exempt employees despite them not earning the monthly equivalent of two times the state

1 minimum wage for full-time employment. As a result, Defendant's issuance of inaccurate wage
2 statements was knowing and intentional.

3 47. As Defendant did not require Plaintiff and Class Members to track the actual hours they
4 worked, and the number of hours Defendant inserted into the hours worked column was only an estimate,
5 Plaintiff and Class Members could not readily ascertain the number of total hours they worked in any
6 given pay period. As a result, Plaintiff and Class Members suffered injury.

7 48. In addition, because the total hours worked entry contained in wage statements issued to
8 Class Members was inaccurate, Plaintiff and Class Members could not readily ascertain an accurate
9 applicable hourly rate they earned in any given pay period. As a result, Plaintiff and Class Members
10 suffered injury.

11 ***F. Defendant Failed to Pay All Wages Owed Upon Discharge***

12 49. Unlike a typical employment situation where employees enter into an initial employment
13 agreement, and the employee continuously worked for the employer, Plaintiff and Class Members were
14 offered employment on a limited contract basis only for a specific period of time, to teach specific
15 class(es), for a specific payment(s).

16 50. As a result of Defendant's policy and practice of employing Plaintiff and Class Members
17 on a limited contract basis only, at the expiration of each Contract Teaching Agreement, Plaintiff and
18 Class Members were discharged from Defendant's employ, and Defendant was required to pay all wages
19 due to Plaintiff and Class Members on that date.

20 51. However, Defendant paid Plaintiff and Class Members in accordance with its bi-weekly
21 schedule, which was after the Contract Teaching Agreement expiration date, resulting in the late
22 payment of Plaintiff's and Class Members' wages upon discharge.

23 52. Defendant knew that it paid Plaintiff and Class Members after the expiration date of its
24 Contract Teaching Agreement, and as result, Defendant's actions were willful.

25 ***G. Defendant Failed to Reimburse Adjunct Class Members for their Necessarily Incurred
26 Business Expenses***

27 53. Throughout the Class Period, Class Members incurred unreimbursed expenses in carrying
28 out their job duties for Defendant when they taught online courses from home. These expenses include
but are not limited to home office expenses including home internet, home or mobile telephone expenses,
ink toner/cartridges and paper and other expenses associated with working from home.

54. Throughout the Class Period, Defendant did not maintain policies or practices of
reimbursing Adjunct Class Members for their business expenses fully or at all.

1 55. Defendant was aware, or should have been aware, that Adjunct Class Members incurred
2 these expenses in direct consequence of the discharge of their job duties because Defendant required
3 and/or expected Class Members to teach online courses from home. Defendant, however, did not
4 reimburse Class Members in any amount for any such expenses incurred throughout the Class Period as
5 required under Labor Code § 2802. As a result, Defendant knowingly permitted Plaintiff and Class
6 Members to pay for expenses incurred in direct consequence of discharging their duties for Defendant,
without any reimbursement or reimbursement in full by Defendant for such expenses.

7 56. Plaintiff and Class Members have been harmed by Defendant's unlawful business expense
8 policies and/or practice and/or lack of such policies and/or practices in that they have not been paid for
9 certain business expenses incurred while employed by Defendant, thereby diminishing their agreed-upon
10 compensation, in substantial amounts to be proved at trial.

11 ***H. Defendant Failed to Reimburse Unreimbursed Expense Class Members for their Necessarily***
12 ***Incurred Business Expenses***

13 57. As a result of the COVID-19 pandemic and the state of emergency declared in California
14 on March 4, 2020 due to the pandemic, all non-essential workers of Defendant including Unreimbursed
15 Expense Class Members were required to work from home. As a result, Unreimbursed Expense Class
16 Members incurred home office expenses including but not limited home internet cost, home internet
17 and/or mobile telephone expenses, ink toner/cartridges and paper, and other expenses associated with
working from home, in order to carry out their job duties.

18 58. Defendant was aware, or should have been aware, that Unreimbursed Expense Class
19 Members incurred these expenses in direct consequence of the discharge of their job duties because
20 Defendant required Unreimbursed Expense Class Members to work from home. Throughout the
21 Unreimbursed Expense Class Period, Defendant, however, did not maintain policies or practices of
22 reimbursing Unreimbursed Expense Class Members for their business expenses fully or at all for any such
23 expenses incurred throughout the Unreimbursed Expense Class Period as required under Labor Code
§ 2802.

24 59. As a result, Defendant knowingly permitted Plaintiff and Unreimbursed Expense Class
25 Members to pay for expenses incurred in direct consequence of discharging their duties for Defendant,
without any reimbursement or reimbursement in full by Defendant for such expenses.

26 60. Plaintiff and Unreimbursed Expense Class Members have been harmed by Defendant's
27 unlawful business expense policies and/or practice and/or lack of such policies and/or practices in that
28

1 they have not been paid for certain business expenses incurred while employed by Defendant, thereby
2 diminishing their agreed-upon compensation, in substantial amounts to be proved at trial.

3
4 ***I. Defendant's Labor Code Violations Were Unfair Business Practice***

5 61. From at least four years prior to filing this complaint, through the present, Defendant has
6 adopted and used unfair business practices to reduce Adjunct Class Members' and Unreimbursed Expense
7 Class Members' compensation and increase profits. These unfair business practices include failing to pay
8 members of the Classes, as applicable, for their time spent on rest periods separate and apart from the
9 Course Rate; failing to authorize and permit timely off-duty rest periods; failing to pay premium pay for
10 missed rest breaks; failing to pay Class Members for their time spent teaching prior to the start of the
11 Contract Teaching Agreement, separately and apart from their Course Rate or at all; and failing to
12 reimburse necessarily incurred business expenses.

13 **CLASS ACTION ALLEGATIONS**

14 36. Plaintiff brings this class action pursuant to Cal. Civ. Pro. Code. § 382 on behalf of the
15 Adjunct Class and the Unreimbursed Expense Class. Upon information and belief, there are more than
16 100 Class Members in each Class. The members of the Classes are so numerous that joinder of all
17 members is impractical.

18 37. Plaintiff's claims are typical of the claims of the members of each Class because he was
19 an adjunct instructor who was (a) not paid separately from the Course Rate or at all for hours worked
20 before the first day of classes and before the start of the Contract Teaching Agreement; (b) not paid at
21 least at the average hourly rate for time spent on rest breaks, was subject to Defendant's policies and
22 practices that prevented and/or impeded his ability to take authorized and permitted to take paid off-duty
23 rest periods, and was not paid premium pay for missed or unpaid rest breaks; (c) not paid all wages due
24 upon discharge, (d) not provided with an accurate and itemized wage statement for each pay period; and
25 (e) not reimbursed for business expenses incurred in the discharge of his duties for Defendant.

26 38. Plaintiff will fairly and adequately represent the interests of the Classes. Plaintiff has no
27 conflict of interest with any member of the Classes. Plaintiff has retained competent and experienced
28 counsel in complex class action litigation. Plaintiff's counsel has the expertise and financial resources to
adequately represent the interests of the Classes.

39. Common questions of law and fact exist as to all members of the Classes and predominate
over any questions solely affecting individual members of the Classes. Among the questions of law and
fact common to the Plaintiff and the Classes are the following:

- a. Whether Adjunct Class Members are non-exempt employees;
- b. Whether a Course Rate is a piece rate;
- c. Whether Defendant violated Labor Code §§ 226.2 and 1194 and Wage Order No. 4-2001, § 4 by failing to pay Plaintiff and Adjunct Class Members for all hours worked including, but not limited to at least minimum wage for their time spent working prior to the Contract Teaching Agreement during the Class Period;
- d. Whether Defendant is liable for liquidated damages to Plaintiff and the Adjunct Class under Labor Code § 1194.2;
- e. Whether Defendant violated Labor Code § 226.2 and Wage Order No. 4-2001, § 4 by failing to pay Plaintiff and the Adjunct Class separately and apart from the Course Rate for their rest breaks;
- f. Whether Defendant violated Wage Order No. 4-2001 § 12 by maintaining policies and practices that prevented or impeded Adjunct Class Members from taking off-duty rest periods;
- g. Whether Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001 § 12 by failing to pay one hour of premium pay for each day that a paid rest period was not provided during the Class Period;
- h. Whether Defendant violated Labor Code §§ 226(a) and 226.2 by failing to issue itemized wage statements to Plaintiff and Adjunct Class Members;
- i. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;
- j. Whether Plaintiff and Class Members suffered injury for the purposes of Labor Code § 226(e);
- k. Whether Defendant violated Labor Code § 203 by failing to pay Class Members for all of their wages due to them at the time of discharge from employment, including but not limited to as a result of failing to pay them wages owed to them for their time worked prior the start of classes and premium pay;
- l. Whether Plaintiff, Adjunct Class Members, and Unreimbursed Expense Class Members, incurred phone and home office expenses in order to perform their duties for Defendant;
- m. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff, Adjunct Class Members, and Unreimbursed Expense Class Members, for their necessarily incurred business expenses;

- 1 n. Whether these violations constitute unfair, unlawful, and fraudulent business practices,
2 in violation of UCL;
3 o. Whether Plaintiff and members of the Classes are entitled to restitution under Bus. &
4 Prof. Code § 17200 *et seq.* for uncompensated wages and unpaid premium pay; and
5 p. The proper formula(s) for calculating damages, interest, and restitution owed to
6 Plaintiff and the Classes;
7 q. Whether the Classes are entitled to declaratory and injunctive relief.

8 40. Class action treatment is superior to any alternative to ensure the fair and efficient
9 adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly
10 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and
11 without duplication of effort and expense that numerous individual actions would entail. No difficulties
12 are likely to be encountered in the management of this class action that would preclude its maintenance
13 as a class action, and no superior alternative exists for the fair and efficient adjudication of this
14 controversy. Members of each Class are readily identifiable from Defendant's employee rosters and/or
15 payroll records.

16 41. Defendant's actions are generally applicable to all members of each Class. Prosecution of
17 separate actions by individual members of each Class creates the risk of inconsistent or varying
18 adjudications of the issues presented herein, which, in turn, would establish incompatible standards of
19 conduct for Defendant.

20 42. Because joinder of all members is impractical, a class action is superior to other available
21 methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at stake for
22 many members of each Class, while substantial, may not be sufficient to enable them to maintain separate
23 suits against Defendant.

24 **FIRST CAUSE OF ACTION**

25 **Failure to Pay for All Hours Worked**

26 **[Cal. Labor Code §§ 226.2, 1194, 1194.2; Wage Order No. 4-2001, § 4]**

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

44. Labor Code § 1194 provides, in relevant part:

"Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage [...], including interest thereon, reasonable attorney's fees, and costs of suit."

1 54. California Labor Code § 226.7(a) provides, “No employer shall require any employee to
2 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
3 Commission.”

4 55. As set forth above, during the Class Period, Plaintiff and Adjunct Class Members routinely
5 worked 3.5 consecutive hours or more in a workday. However, Defendant did not compensate them for
6 their time spent on rest breaks separately and apart from the Course Rate, as required under Labor Code
§ 226.2.

7 56. Under the theory that Adjunct Class Members were not piece-rate workers but were still
8 non-exempt under Wage Order No. 4-2001, § 1(A), Defendant also regularly failed to authorize and
9 permit Plaintiff and Adjunct Class Members to take paid off-duty rest breaks by requiring them to remain
10 available to students for questions before, during and after class, in violation of Wage Order No. 4-2001
§ 12.

11 57. As a result of Defendant’s policies and practices, Plaintiff and the Adjunct Class Members
12 were not authorized and permitted to take compliant rest breaks, and are entitled to recover one additional
13 hour of pay at the employee’s regular rate of compensation for each day in which Defendant failed to
14 authorize and permit Adjunct Class Members to take paid rest periods as required under Labor Code §
15 226.7 and Wage Order No. 4-2001 § 12.

16 58. Plaintiff, on behalf of himself and all other Adjunct Class Members, requests relief as
17 described below.

THIRD CAUSE OF ACTION
Failure to Issue Accurate Itemized Wage Statements
[Labor Code §§ 226(a), (e); 226.2]

18
19 59. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
20 preceding paragraphs.

21 60. During the Wage Statement Class Period, Defendant failed to furnish Plaintiff and
22 Adjunct Class Members with accurate itemized wage statements in violation of Labor Code § 226(a) by
23 failing to list on the wage statements (1) gross wages earned, (2) total hours worked, (3) net wages earned,
24 and (4) all applicable hourly rates in effect during the pay period, and the corresponding number of hours
worked at each hourly rate, in violation of Labor Code § 226(a)(1), (2), (5), and (9).

25 61. Defendant also failed to itemize the total number of hours of compensable rest periods,
26 the rate of compensation, and the gross wages paid for those periods during the pay period; and the total
27 hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during
28 the pay period, as required under Labor Code § 226.2.

62. Plaintiff and Adjunct Class Members suffered injury as a result of Defendant's knowing and intentional failure to comply with Labor Code § 226(a).

63. As a result of Defendant's knowing and intentional violations of Labor Code § 226(a) described above, Adjunct Class Members are entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, for each incomplete and/or inaccurate wage statement issued to them, up to an amount not exceeding an aggregate penalty of \$4,000 for each Adjunct Class Member, pursuant to Labor Code § 226(e).

64. Plaintiff, on behalf of himself and all other Adjunct Class Members, requests relief as described below.

FOURTH CAUSE OF ACTION
Failure to Pay Compensation Due Upon Discharge
[Cal. Labor Code §§ 201-203]

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

66. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to Class Members promptly at their time of their discharge from employment. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then the employer is liable for penalties in the form of continued compensation up to 30 work days.

67. During the Waiting Time Penalties Class Period, Defendant employed Plaintiff and Adjunct Class Members on a limited contract by contract basis, for a set period of time. At the end of the contract, Plaintiff and Adjunct Class Members were discharged from the employment of Defendant for the purposes of Labor Code § 201-203. As a result, Defendant was required to pay Plaintiff and Adjunct Class Members all wages due upon the end of the Contract Teaching Agreement. However, Defendant did not pay on this date, and waited until its regular payroll schedule to pay Plaintiff and Class Members, which was often many days after the expiration of their contract.

68. As a result, Defendant is liable to Plaintiff and Adjunct Class Members for waiting time penalties pursuant to Labor Code § 203. Defendant's failure to pay wages for such time was willful.

69. Defendant failed to pay Class Members who are former employees their final wages at the time of their discharge from employment, as required by Labor Code §§ 201 and 202, including but not limited to as a result of failing to pay them all wages due to them for the work performed prior to the first day of classes, and premium pay.

70. In light of the clear law requiring that Defendant pay for time spent working prior to the start of the Contract Teaching Agreement, to pay for rest breaks hourly and separately from the Course Rate, and to pay premium pay for missed breaks, Defendant's failure to pay wages for such time was willful.

71. As a result, Defendant is liable to Plaintiff and other members of the Waiting Time Penalty Class for waiting time penalties pursuant to Labor Code § 203.

72. Plaintiff, on behalf of himself and all other Adjunct Class Members, requests relief as described below.

FIFTH CAUSE OF ACTION
Failure to Reimburse Cell Phone Business Expenses
[Cal. Labor Code § 2802]

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

74. Labor Code § 2802 provides: “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

75. In order to discharge their duties for Defendant, Plaintiff, the Adjunct Class Members and the Unreimbursed Expenses Class Members were expected and/or required to incur unreimbursed expenses in carrying out their work duties for Defendant. These expenses include but are not limited to home internet, home or mobile telephone expenses, ink toner/cartridges and paper and other expenses associated with working from home.

76. Although having knowledge of such expenses, Defendant did not reimburse Plaintiff, Adjunct Class Members, and Unreimbursed Expense Class Members for their business expenses, as required by Labor Code § 2802.

77. Defendant's failure to reimburse Plaintiff, Adjunct Class Members, and Unreimbursed Expense Class Members business expenses violated non-waivable rights secured to them by Labor Code § 2802. Plaintiff, Adjunct Class Members, and Unreimbursed Expense Class Members are entitled to reimbursement for these business expenses, plus interest and attorneys' fees and costs, under Labor Code § 2802.

78. Plaintiff, on behalf of himself, Adjunct Class Members, and Unreimbursed Expense Class Members, requests relief as described below.

SIXTH CAUSE OF ACTION
Violation of Unfair Competition Laws
[Cal. Bus. & Prof. Code § 17200 *et seq.*]

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

80. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards. Through its actions alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's conduct has violated state wage and hour laws as herein described.

81. Beginning at least four years prior to the filing of this Complaint, Defendant committed, and continues to commit, acts of unfair competition, as defined in the UCL by wrongfully denying Adjunct Class Members payment in the amount of at least minimum wages for all their hours worked in violation of Labor Code §§ 226.2 and 1194 and Wage Order No. 4-2001 § 4; by failing to authorize and permit paid rest breaks and pay premium pay for missed rest breaks in violation of Labor Code § 226.7 and Wage Order No. 4-2001 § 12; and by failing to reimburse Adjunct Class Members and Unreimbursed Expense Class Members business expenses in violation of Code § 2802.

82. By its actions and omissions, Defendant has substantially injured Plaintiff, Adjunct Class Members, and Unreimbursed Expense Class Members. The harm to Plaintiff, Adjunct Class Members, and Unreimbursed Expense Class Members resulting from Defendant's labor code violations outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions described herein constitute an unfair business practice or act within the meaning of the UCL.

83. Plaintiff, on behalf of himself and all other Adjunct Class Members and Unreimbursed Expense Class Members, requests relief as described below.

SEVENTH CAUSE OF ACTION
Civil Penalties
[Labor Code §§ 2698 *et seq.*]

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

85. Plaintiff seeks PAGA penalties on behalf of himself, Adjunct Aggrieved Employees, and Aggrieved Employees, for the following violations:

1 ***Violation of Labor Code §§ 226.2 and 1194 and IWC Wage Order No. 4-2001, § 4***

2 86. During the PAGA Period, Defendant did not compensate Adjunct Aggrieved Employees
3 for their time spent working prior to the start date of the Contract Teaching Agreement, separately from
4 the Course Rate, or at all, in violation of Labor Code §§ 226.2 and 1194, and Wage Order No. 4-2001, §
5 4.

6 87. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled
7 to one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2 and 1194, and
8 two hundred dollars (\$200) per pay period for each subsequent violation.

9 ***Violation of Labor Code §§ 226.2, 226.7 and IWC Wage Order No. 4-2001 § 12***

10 88. During the PAGA Period, Defendant failed to pay Adjunct Aggrieved Employees for their
11 time spent on rest breaks separately and apart from the Course Rate, in violation of Labor Code § 226.2.
12 Defendant also failed to authorize and permit paid rest breaks and pay missed rest break premiums in
13 violation of Labor Code § 226.7 and Wage Order No. 4-2001 § 12.

14 89. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled
15 to one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2 and 226.7,
16 and two hundred dollars (\$200) per pay period for each subsequent violation.

17 ***Violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, § 11***

18 90. During the PAGA Period, Defendant failed to provide off-duty meal breaks in violation of
19 Labor Code § 512, and failed to pay missed meal break premiums in violation of Wage Order No. 4-2001
20 § 11 and Labor Code § 226.7.

21 91. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled
22 to one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.7, 512, and two
23 hundred dollars (\$200) per pay period for each subsequent violation.

24 ***Violation of Labor Code §§ 226(a)(2) (a)(3), (a)(5) and 226.2(a)***

25 92. During the PAGA Period, Defendant failed to issue accurate itemized wage statements by
26 failing to list on the wage statements (1) gross wages earned, (2) total hours worked, (3) net wages earned,
27 and (4) all applicable hourly rates in effect during the pay period, and the corresponding number of hours
28 worked at each hourly rate, in violation of Labor Code § 226(a)(1), (2), (5), and (9).

 93. Defendant also failed to itemize the total number of hours of compensable rest periods,
the rate of compensation, and the gross wages paid for those periods during the pay period; and the total
hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during
the pay period, as required under Labor Code § 226.2.

1 94. Pursuant to Labor Code § 226.3, Plaintiff and Adjunct Aggrieved Employees are entitled
2 to \$250 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a
3 violation.

4 95. Alternatively, under Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees
5 are entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved
6 Employee for each initial violation of Labor Code § 226(a)(1), (a)(2), (a)(3), (a)(5), and (a)(9), and two
7 hundred dollars (\$200) per pay period for each subsequent violation.

8 ***Violation of Labor Code § 2802 on behalf of Adjunct Aggrieved Employees***

9 96. During the PAGA Period, Adjunct Aggrieved Employees incurred unreimbursed expenses in
10 carrying out their job duties for Defendant when they taught online courses from home, including but not
11 limited to home office expenses including internet cost, home or mobile telephone expenses, ink
12 toner/cartridges and paper and other expenses associated with working from home. Defendant knew or should
13 have known that Adjunct Aggrieved Employees incurred these expenses because Defendant required and/or
14 expected Adjunct Aggrieved Employees to teach online courses from home. Defendant did not reimburse these
15 expenses in violation of Labor Code § 2802.

16 97. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are entitled
17 to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars (\$200) per pay
18 period for each subsequent violation.

19 ***Violation of Labor Code § 2802 on behalf of Aggrieved Employees***

20 98. During the PAGA Period, as a result of the COVID 19 pandemic, defendant required and/or
21 expected Plaintiff and Aggrieved Employees to work from home. As a result, Plaintiff and Aggrieved
22 Employees incurred home office expenses including but not limited home internet cost, home or mobile
23 telephone expenses, ink toner/cartridges and paper, and other expenses associated with working from
24 home, in order to carry out their job duties for Defendant. However, Defendant did not reimburse them
25 for these expenses fully or at all in violation of § 2802 of the California Labor Code.

26 99. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one
27 hundred dollars (\$100) per pay period for each initial violation of Labor Code § 2802 and two hundred dollars
28 (\$200) per pay period for each subsequent violation.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff, on behalf of himself and the Classes, prays for the following relief:

3 A. An Order that this action may proceed and be maintained as a class action, with the Classes
4 as designated and defined in this Complaint, and that the Plaintiff and his counsel be certified as
5 representatives and Counsel for the Classes, respectively.

6 B. On the First Cause of Action: That the Court find and declare that Defendant violated
7 Labor Code §§ 226.2, 1194, and 1194.2 and Wage Order No. 4-2001, § 4 by failing to pay Plaintiff and
8 Adjunct Class Members for their time spent performing work prior to the start of the Contract Teaching
9 Agreements, separately and apart from the Course Rate, or at all, and award Plaintiff and the Adjunct
10 Class the amount of their unpaid minimum wages owed to them for that work, plus liquidated damages
in an additional amount equal to the amount of wages unlawfully withheld during the Class Period.

11 C. On the Second Cause of Action: That the Court find and declare that Defendant violated
12 Labor Code §§ 226.2, 226.7 and Wage Order No. 4-2001, § 12 by failing to pay Plaintiff and Adjunct
13 Class Members for their time spent on rest breaks separately and apart from the Course Rate, failing to
14 authorize and permit timely off-duty rest breaks, and failing to pay premium pay for rest breaks; and
15 award Plaintiff and the Adjunct Class unpaid wages for rest break time and unpaid premium pay for
missed rest breaks.

16 D. On the Third Cause of Action: That the Court find and declare that Defendant violated
17 Labor Code §§ 226(a) and 226.2, and award Plaintiff and Adjunct Class Members who worked for
18 Defendant during the one year prior to the filing of this action statutory penalties under Labor Code §
226(e);

19 E. On the Fourth Cause of Action: That the Court find and declare that Defendant has violated
20 Labor Code §§ 201–202, and award Plaintiff and Class Members, who were discharged from employment
21 during the three years prior to the filing of this action, waiting time penalties under Labor Code § 203;

22 F. On the Fifth Cause of Action: That the Court find and declare that Defendant's business
23 expense policies and/or practices violate California law, including Labor Code § 2802, by refusing and/or
24 failing to reimburse business expenses incurred by Plaintiff, Adjunct Class Members and Unreimbursed
25 Expense Class Members, and that the Court award to Plaintiff, Adjunct Class Members and Unreimbursed
26 Expense Class Members all business expenses, and interest thereon, that they are owed, pursuant to Labor
Code § 2802, in an amount to be proved at trial.

27 G. On the Sixth Cause of Action: That the Court find and declare Defendant has violated the
28 UCL by failing to pay Adjunct Class Members for their rest break time and time spent working prior to

1 the start of the Contract Teaching Agreement separately and apart from the Course Rate, in violation of
2 Labor Code §§ 1194, 226.2, 226.7, and Wage Order No. 4-2001, § 12; by failing to authorize and permit
3 paid rest breaks for members of the Class and by failing to pay premium pay for missed rest breaks in
4 violation of Labor Code § 226.7 and IWC Wage Order 4-2001, § 12; failing to reimburse Adjunct Class
5 Members and Unreimbursed Expense Class Members' business expenses; and award restitution to the
6 Classes, including, but not limited to, unpaid wages, an additional hour of pay at the employee's regular
7 rate of compensation for each day that a rest break was not provided during the Class Period, and
8 reimbursement of their business expenses in the amount to be proved at trial.

9 H. On the Seventh Cause of Action: That the Court award PAGA Civil Penalties, and
10 attorneys' fees and costs, as provided under Labor Code § 2699.

11 I. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
12 including, but not limited to, Labor Code §§ 1194, 226(e) and (h), 2802(c), and Cal. Civil Procedure Code
13 § 1021.5.

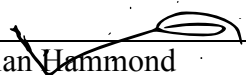
14 J. All other relief as this Court deems proper.

15 **JURY DEMAND**

16 Plaintiff hereby demands trial by jury of all claims against Defendant alleged herein.

17 Dated: January 4, 2021

18 Respectfully submitted,

19 
20 By: Julian Hammond
21 HAMMONDLAW, P.C.

22 *Attorneys for Plaintiff*
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