

1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackermann, CA Bar No. 229832
3 cja@ackermanntilajef.com
4 1180 South Beverly Drive, Suite 610
5 Los Angeles, CA 90035
6 Telephone: (310) 277-0614
7 Facsimile: (310) 277-0635

8 **INDIA LIN BODIEN, ATTORNEY AT LAW**
9 India Lin Bodien, WA Bar. No. 44898
10 (Pro Hac Vice Admission Pending)
11 india@indialinbodianlaw.com
12 2522 North Proctor Street, No. 387
13 Tacoma, Washington 98406
14 Telephone: (253) 212-7913
15 Facsimile: (253) 276-0081

16 *Attorneys for Plaintiff, the Class, the LWDA, and the other Aggrieved Employees*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SANTA CLARA**

19 KOJI S. SAKAI, an individual, on behalf of all
20 persons similarly situated on behalf of the
21 State of California, as a private attorney
22 general, and on behalf of all aggrieved
23 employees,

24 **PLAINTIFF,**

25 **v.**

26 INTERNATIONAL TECHNOLOGICAL
27 UNIVERSITY FOUNDATION, a Domestic
28 Non-Profit,

DEFENDANT.

E-FILED
11/23/2021 11:52 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV390762
Reviewed By: R. Walker

CASE NO. 21CV390762

**CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

(1) FAILURE TO PROVIDE COMPLETE
AND ACCURATE WAGE STATEMENTS
(LABOR CODE §§ 226(a));
(2) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE §2802);
(3) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);
(4) FAILURE TO PAY ALL MINIMUM
WAGES (LABOR CODE §§ 226.2, 1194,
1194.2, 1197);
(5) FAILURE TO PROVIDE MEAL
PERIODS AND/OR PAY MEAL PERIOD
PREMIUMS (LABOR CODE §§ 226.7, 512;
IWC WAGE ORDER NO. 4-2001);
(6) FAILURE TO PROVIDE COMPLIANT
REST PERIODS TO AND/OR PAY MISSED
REST BREAK PREMIUMS (LABOR CODE §
226.7; IWC WAGE ORDER NO. 4-2001);
(7) WAITING TIME PENALTIES (LABOR
CODE § 201-203);
(8) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204);
(9) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2699, *et seq.*).

1 Plaintiff KOJI S. SAKAI (“Plaintiff”) brings this action against Defendant
2 INTERNATIONAL TECHNOLOGICAL UNIVERSITY FOUNDATION (“Defendants” or
3 “ITU”) as a PAGA representative action under the Labor Code Private Attorneys General Act of
4 2004, § 2699, *et seq.* (“PAGA”) and as a class action pursuant to California Code of Civil
5 Procedure § 382 as follows:

6 **INTRODUCTION**

7 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
8 behalf of the State of California and the group of aggrieved employees defined as follows:
9 Plaintiff and all other individuals who worked for Defendant as adjunct professors or part time
10 lecturers in California from October 19, 2019 through October 16, 2021 (the “PAGA Period”)
11 (the “Aggrieved Employees”).

12 2. This is also a class action pursuant to California Code of Civil Procedure § 382 on
13 behalf of the following Class: Plaintiff and all other individuals who worked for Defendant as
14 adjunct professors or part time lecturers in California from October 19, 2019 through October 16,
15 2021 (the “Class Period”) (the “Class” or “Class Members”).

16 3. Plaintiff brings this action against Defendant ITU for: (1) failure to provide
17 complete and accurate wage statements; (2) failure to reimburse business expenses; (3) failure to
18 pay timely wages; (4) failure to pay all minimum wages; (5) failure to provide compliant meal
19 breaks and/or pay meal break premiums; (6) failure to provide paid rest breaks and/or pay missed
20 rest break premiums; (7) failure to pay all wages due to its former employees upon termination
21 based on the foregoing; and (8) unfair business practices based on the foregoing. As a result of
22 the foregoing, Defendant has violated California statutory laws as described below.

23 4. Additionally, Plaintiff brings this representative action pursuant to Labor Code §
24 2699, *et seq.* seeking penalties for Defendants’ violation of California Labor Code §§ 201, 202,
25 203, 204, 210, 226, 226.7, 512, 1194, 1197, 1197.1, 1198, 1199 and 2802. Based upon the
26 foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of
27 Labor Code §2699, *et seq.*

28 ///

1 **JURISDICTION AND VENUE**

2 5. This Court has subject matter jurisdiction over all causes of action asserted herein
3 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
4 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
5 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
6 arises under the laws of the State of California or is subject to adjudication in the courts of the
7 State of California.

8 6. This Court has personal jurisdiction over Defendant because Defendant has
9 caused injuries in the County of Santa Clara and State of California through their acts, and by
10 their violation of the California Labor Code and California state common law.

11 7. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
12 Civil Procedure § 395. Defendant operates within California and does business within Santa
13 Clara County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and
14 all employees within the State of California and Santa Clara County.

15 **PARTIES**

16 8. Plaintiff is a resident of California and at all times pertinent hereto worked for
17 Defendant as an adjunct professor in Santa Clara County.

18 9. Plaintiff, the Class Members, and all aggrieved employees at all times pertinent
19 hereto, have been classified as employees by Defendant. Defendant hires employees to work in
20 California.

21 10. Upon information and belief, Plaintiff, the Class Members, and all aggrieved
22 employees are covered by California Industrial Welfare Commission Occupational Wage Order
23 No. 4-2001.

24 11. ITU is a domestic non-profit organization operating a university within the State
25 of California. Upon information and belief, Defendant employed Plaintiff and similarly situated
26 persons as employees within California. Defendant has done and does business throughout the
27 State of California including Santa Clara County.

28 ///

1 **FACTUAL BACKGROUND**

2 12. As to Plaintiff, the Class, and all Aggrieved Employees, Defendant failed to
3 provide accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code
4 § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized
5 wage statement in writing showing:

- 6 (1) gross wages earned;
7 (2) total hours worked by the employee (unless the employee is exempt under Labor
8 Code § 226(j);
9 (3) the number of piece-rate units earned and any applicable piece rate if the
10 (4) employee is paid on a piece rate;
11 (5) all deductions, provided that all deductions made on written orders of the
12 (6) employee may be aggregated and shown as one item;
13 (7) net wages earned;
14 (8) the inclusive dates of the period for which the employee is paid;
15 (9) the name of the employee and only the last four digits of his or her social security
16 number or an employee identification number other than a social security number;
17 (8) the name and address of the legal entity that is the employer...;
18 (9) all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate by the employee...

20 13. Due to Defendant's failure to include hours worked and applicable hourly rates on
21 any wage statements to Plaintiff, the Class, and the Aggrieved Employees, Defendant's violated
22 Labor Code § 226(a)(2) and (9) throughout. Thus, Plaintiff is an aggrieved employee within the
23 meaning of PAGA and Defendant has violated Labor Code § 226 with respect to Plaintiff and all
24 Aggrieved Employees.

25 14. Nor can Defendant defend itself by invoking the clause in Section 226(a)(2) that
26 removes exempt employees from the total hours worked requirement as specified in Labor Code
27 § 226(j). Under Labor Code section 226, subsection (j) "an itemized wage statement furnished by
28 an employer pursuant to subdivision (a) shall not be required to show total hours worked by the
employee if (1) the employee's compensation is solely based on salary and the employee is
exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order
of the IWC; and (2) the employee is exempt from payment of minimum wage and overtime
under any of the following: (A) the exemption for persons employed in an executive,
administrative, or professional capacity in any applicable order of the IWC..."

 15. Here, however, Defendant's part-time adjunct professors do not earn twice the

1 minimum wage based on a 40-hour workweek. Specifically, under California law, in order to be
2 classified as “salaried exempt” an employee must be paid twice minimum wage based on a 40-
3 hour work week. See Labor Code section 515(a) (professional exemption is someone who is
4 primarily working as a learned professional, who exercises discretion and independent judgment,
5 and who earns a monthly salary equal to two times the state minimum wage for full-time
6 employment); see also Labor Code section 515(c) (specifying that, for purposes of 515(a), full
7 time employment means employment in which an employee is employed for 40 hours per week).
8 Since California’s minimum wage was \$12 per hour in 2019 and \$13 per hour in 2020 (for
9 employers with more than 26 employees), the minimum amount per year that employees would
10 have to earn to qualify for the exemption under state law would be approximately \$54,000 (i.e.,
11 $\$13 \text{ per hour} * 2 = \$26 \text{ per hour} * 40 \text{ hour week} = \$1,050 * 52 \text{ weeks} = \$54,080 \text{ annually}$).

12 16. Here, Plaintiff and his fellow adjunct professors did not earn a monthly salary
13 equivalent to no less than two times the state minimum wage based on forty-hour workweek.
14 According to Plaintiff’s W-2’s, Plaintiff only earned \$26,400 for 2018 and \$16,000 for 2019,
15 whereby to qualify for the exemption he would have had to earn approximately \$54,000. All of
16 Defendant’s part-time adjunct professors during the PAGA and Class Periods earned less than
17 \$54,000 per year. As a result, they are non-exempt under state law.

18 17. Notably, for PAGA penalty claims predicated on an underlying Labor Code
19 section 226(a) violation, a plaintiff need not show “injury” or a “knowing and intentional”
20 violation to recover PAGA penalties. See *Lopez v. Friant & Associates, LLC*, 15 Cal.App. 773,
21 788 (Cal. App. 2017) (“Consistent with the PAGA statutory framework and the plain language
22 and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under
23 PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and
24 intentional” requirements of section 226(e)(1)”); see also *Willner v. Manpower Inc.* 35 F. Supp.
25 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to
26 establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v.*
27 *Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of
28 recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not

1 establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS
2 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code §
3 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

4 18. Labor Code § 226(e) provides:

5 (1) An employee suffering injury as a result of a knowing and intentional failure by an
6 employer to comply with subdivision (a) is entitled to recover the greater of all actual
7 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
8 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
9 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
10 award of costs and reasonable attorney’s fees.

11 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
12 employer fails to provide a wage statement.

13 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
14 employer fails to provide accurate and complete information as required by any one or
15 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
16 promptly and easily determine from the wage statement alone one or more of the
17 following:

18 (i) The amount of the gross wages or net wages paid to the employee during the
19 pay period or any of the other information required to be provided on the itemized
20 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
21 (a).

22 (ii) Which deductions the employer made from gross wages to determine the net
23 wages paid to the employee during the pay period. Nothing in this subdivision
24 alters the ability of the employer to aggregate deductions consistent with the
25 requirements of item (4) of subdivision (a).

26 (iii) The name and address of the employer and, if the employer is a farm labor
27 contractor, as defined in subdivision (b) of Section 1682, the name and address of
28 the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social
security number or an employee identification number other than a social security
number.

19 Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226
20 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
21 per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
22 violation in a subsequent citation, for which the employer fails to provide the employee a wage
23 deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained
24 in detail above, Defendant failed to provide Plaintiff, the Class, and the Aggrieved Employees
25 with accurate and complete itemized wage statements. Accordingly, Plaintiff, the Class, and the
26 Aggrieved Employees may also recover Labor Code § 226.3 penalties for Defendant’s violations
27 of Labor Code § 226(a).

28 19. Plaintiff, the Class, and the Aggrieved Employees regularly incurred expenses

1 during the course of their employment, such as printing, computer, internet and cell phone service
2 plans, cell phone, and other home office expenses, that were not reimbursed. To perform their
3 duties, Plaintiff, the Class, and the Aggrieved Employees also had to utilize their own personal
4 work computers, cellphones, and home offices to perform such tasks as (1) teaching online
5 courses; (2) reading and responding to emails from students, co-workers, and supervisors, (3)
6 researching topics necessary to create and develop courses and preparing courses; (4) grading; or
7 (5) attending online “meetups.” Additionally, during the COVID-19 pandemic, Plaintiff theorizes
8 that home office expenses have only increased as many universities have transitioned to online
9 courses. Yet, Plaintiff, the Class, and the Aggrieved Employees were not fully reimbursed for
10 these expenses.

11 20. Cal. Labor Code § 2802 (a) provides that: “An employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct consequence
13 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
14 even though unlawful, unless the employee, at the time of obeying the directions, believed them
15 to be unlawful.”

16 21. California Labor Code section 2802 requires an employer in California to
17 “indemnify his or her employee for all necessary expenditures or losses incurred by that employee
18 in direct consequence of the discharge of his or her duties.” See Cal. Labor Code section
19 2802(a); *see also* 2802(c) where “necessary” is defined to include all “reasonable” costs. “The
20 elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred
21 losses; (ii) the expenditures or losses were incurred in direct consequence of the employee's
22 discharge of his or her duties, or obedience to the directions of the employer; and (iii) the
23 expenditures or losses were reasonable and necessary.” *Marr v. Bank of America*, 2011 U.S. Dist.
24 LEXIS 24868 (N.D. March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th
25 554, 568 (2007)). “In addition, the employer ‘must either know or have reason to know that the
26 employee has incurred [the] expense.’” *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901
27 (N.D.Cal. 2009)). Where, as here, an employer has knowledge that employees are incurring a
28 reimbursable expense, the employer must “exercise due diligence to ensure each employee is

1 reimbursed.” *Marr*, at *1. The right of an employee to expense reimbursements from his or her
2 employer is not waivable. *See* Cal. Labor Code section 2804; *Edwards v. Arthur Anderson*, 44
3 Cal. 4th 937, 951 (2008).

4 22. Furthermore, under California Labor Code section 2802, employers must
5 reimburse employees for all reasonable work-related expenses, including their work-related home
6 internet expenses and cell phone expenses, regardless of whether or not employees incurred any
7 additional out-of-pocket cost from work-related use. *See, Cochran v. Schwan’s Home Service,*
8 *Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must use their
9 personal cell phones for work-related calls, Labor Code section 2802 requires the employer to
10 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
11 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”).

12 23. Thus, where employees in California are expected to use their cell phone or their
13 internet at home for work, courts have held that they incurred home internet expenses in “direct
14 consequence of the discharge of his or her duties” and were entitled to reimbursement. *See*
15 *Aguilar v. Zep, Inc.*, 2014 US Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward
16 Chen) (where outside sales reps used home internet and computers and cell phones for work,
17 although they conceded that they would have incurred the same expenses without work duties, the
18 court held that the employer was obligated to reimburse a reasonable portion of these expenses);
19 *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon.
20 Edward Chen) (certifying class of claim processors working from home with section 2802 claims
21 for landline phone reimbursements where their employer required them to work from home and
22 to have a home landline for work).

23 24. Here, Defendant has no policy to reimburse Plaintiff, the Class, and the Aggrieved
24 Employees on a monthly basis for their reasonable and necessary business expenses. Plaintiff
25 regularly incurred expenses, and due to the lack of any reimbursement policy, he had to bear the
26 burden of these operating costs alone. Therefore, Defendant has violated § 2802 with respect to
27 Plaintiff, the Class, and the Aggrieved Employees.

28 25. Labor Code § 204 expressly requires that “all wages...earned by any person in any

1 employment are due and payable twice each calendar month, on days designated in advance by
2 the employer as regular pay days.” Here, Defendant only paid Plaintiff, the Class, and the
3 Aggrieved Employees once per month.

4 26. Additionally, Labor Code § 204 expressly requires that employers who pay
5 employees on a weekly, biweekly, or semimonthly basis to pay all wages “not more than seven
6 calendar days following the close of the payroll period.” Due to Defendant’s failure to pay
7 Plaintiff, the Class, and Aggrieved Employees for all their hours worked, and pay for rest periods,
8 or pay meal and rest period premiums and Defendant’s practice of paying once per month,
9 Defendant failed to timely pay their employees within seven calendar days following the close of
10 payroll in accordance with Labor Code § 204 on a regular and consistent basis. Labor Code §
11 210 states that:

12 (a) In addition to, and entirely independent and apart from, any other
13 penalty provided in this article, every person who fails to pay the wages of each
14 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
15 1197.5, shall be subject to a civil penalty as follows:

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

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

21 (b) The penalty shall be recovered by the Labor Commissioner as part of a
22 hearing held to recover unpaid wages and penalties pursuant to this chapter or in
23 an independent civil action. The action shall be brought in the name of the people
24 of the State of California and the Labor Commissioner and the attorneys thereof
25 may proceed and act for and on behalf of the people in bringing these actions.
26 Twelve and one-half percent of the penalty recovered shall be paid into a fund
27 within the Labor and Workforce Development Agency dedicated to educating
28 employers about state labor laws, and the remainder shall be paid into the State
Treasury to the credit of the General Fund.

27. As a result of Defendant’s unlawful policies of failing to pay Plaintiff, the Class,
and Aggrieved Employees for all hours worked, and for rest periods or meal and rest period
premiums and for Defendant’s practice of paying once per month, Plaintiff further seeks to
recover on behalf of himself, the Class, and the Aggrieved Employees, and the State of
California, all penalties pursuant to Cal. Labor Code § 210.

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

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

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

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

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

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

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

26 Thus, according to Cal. Labor Code § 226.2, which codifies the decision in *Armenta v. Osmose,*
27 *Inc.* (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are paid on a piece-rate
28 basis, such as Plaintiff and the Aggrieved Employees, who were paid a flat amount per course
must be compensated for all the hours that they work, including non-productive time

29 29. This, however, did not happen at ITU. Plaintiff, the Class, and the Aggrieved
30 Employees were not paid for many activities that occurred outside of teaching their classes, such
31 as, but not limited to (1) creating course materials, such as syllabi, in-class and homework
32 assignments, tests and quizzes; (2) grading assignments, tests and quizzes; (3) assisting students
33 with their coursework by consulting with students outside of class time and during breaks to
34 provide regular and timely feedback; (4) advising students in matters relating to academics,
35 vocational goals, attendance, and behavior; (5) conducting student retention and re-entry
36 activities; (6) completing professional development and in-service activities in accordance with
37 Defendant’s standards; and (7) attending faculty meetings/mandatory trainings and orientations.

38 30. As a result, Plaintiff, the Class, and the aggrieved employees were denied
compensation for all hours worked, in violation of Cal. Labor Code § 1194. Based upon these

1 same factual allegations, Plaintiff also seeks penalties on behalf of all aggrieved employees under
2 Labor Code § 1199.

3 31. Labor Code § 512, and Section 11 of Wage Order 4-2001 require employers to
4 provide employees with thirty (30) minute uninterrupted and duty-free meal period within the
5 first five hours of work. Moreover, an employee who works more than ten (10) hours per day is
6 entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. *Brinker*
7 *Rest. Corp. v. Superior Court*, (2012) 53 Cal. 4th 1004, 1042 (“Accordingly, first meal periods
8 must start after no more than five hours.”); See also *Munoz v. Guimarra Vineyards Corp.*, 2015
9 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding that meal periods must be taken within the
10 first five hours of work).

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

21 33. Here, despite what policies Defendant may claim to have, they regularly deny
22 Plaintiff, the Class, and the Aggrieved Employees meal periods that comply with the substantive
23 law on the rare shifts over five hours. Defendant did not provide meal periods in compliance with
24 Labor Code §§ 512, 226.7, and Wage Order 4-2001. Nor does Defendant keep track of when
25 meal periods are taken, and as such, there are no records of whether Plaintiff, the Class, and the
26 Aggrieved Employees ever took a timely and complete meal period.

27 34. This failure to provide meal periods to Plaintiff, the Class, and the Aggrieved
28 Employees within the statutory requirements of § 512 and Section 11(a) of Wage Order 4-2001,

1 which again, as easily confirmed by Defendant's own records, is not the result of Plaintiff's
2 choosing. As noted above, Plaintiff worked at a college university whereby he, and the other
3 Class Members and Aggrieved Employees were not allowed to take complaint off-duty meal
4 periods. Thus, the failure of Plaintiff, the Class, and the Aggrieved Employees to take meal
5 periods with the first 5 hours of work, is not the result of any choice by Plaintiff, the Class, and
6 the Aggrieved Employees, but rather, is based on Defendant's faulty policies, practices, and
7 procedures.

8 35. Pursuant to Labor Code § 226.7, and Wage Order 4-2001, Defendant failed to
9 provide Plaintiff, the Class, and the Aggrieved Employees with compensated, duty-free rest
10 periods of not less than ten (10) minutes for every major fraction of four hours worked.

11 36. Labor Code § 226.7 provides "an employer shall not require an employee to work
12 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
13 regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Under IWC Wage
14 Order 4-2001 an employer must authorize and permit all employees to take ten (10) minute duty
15 free rest periods for every major fraction of four hours worked.

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

26 38. Here, as in *Bluford*, Defendant compensated Plaintiff, the Class, and the Aggrieved
27 Employees by way of a piece-rate system per credit or per course. As a result, when they were not
28 teaching, but rather taking a mandated rest period, they were not compensated for their time, in

1 violation of Labor Code section 226.7 and the Wage Order.

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

8 40. The *Brinker* Court explained in the context of rest breaks that employer liability
9 attaches from adopting an unlawful policy:

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

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

22 41. Even an employer who maintains an otherwise compliant rest period policy,
23 "reminded their employees of their availability-and the importance-of taking breaks on a daily
24 basis, and even went so far as to conduct regular audits to ensure that employees were being
25 offered rest breaks" will still be liable for rest period violations if the employees were not
26 separately or properly compensated for the non-productive time associated with rest periods
27 under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist.
28 LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd* *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS

1 112540, 20 I 6 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. Case No.
2 0:16-23f-80120 (9th Cir. Nov. 16, 2016).

3 42. In addition, Plaintiff, the Class, and the Aggrieved Employees were not
4 compensated with one (1) hours' worth of pay at their regular rate of compensation when they
5 were not provided with a compliant rest period.

6 43. As a result of Defendant's failure to pay Plaintiff, the Class, and the Aggrieved
7 Employees for all hours worked, including non-productive time and meal and rest period
8 premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides "if an employer
9 willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of
10 the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v.*
11 *Barca*, (1998) 68 Cal.App.4th 487, 492.

12 44. Due to Defendant's faulty policies described above, Plaintiff and all Class
13 Members and aggrieved employees whose employment with Defendant concluded were not
14 compensated for each and every hour worked or at the appropriate rate. Additionally, Defendant
15 has failed to pay all Class Members and aggrieved employees for all hours worked (including at
16 the proper rates), and meal and rest period premiums, whose sums were certain, at the time of
17 termination or within seventy-two (72) hours of their resignation and have failed to pay those
18 sums for thirty (30) days thereafter.

19 45. Pursuant to Labor Code § 2699.3 (a), on October 19, 2020, Plaintiff gave written
20 notice by certified mail to Defendant and to the LWDA of his claims for violations of Labor Code
21 §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802 as
22 well as IWC Wage Order 4-2001, including theories supporting these claims as alleged herein. As
23 of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter.
24 Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of his
25 PAGA claims on behalf of himself and all other current and former Aggrieved Employees of
26 Defendant.

27 **CLASS ACTION ALLEGATIONS**

28 46. Plaintiff brings this action, on behalf of herself and all others similarly situated, as

1 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent:

2 Plaintiff and all other individuals who worked for Defendant as adjunct professors or part
3 time lecturers in California from October 19, 2019 to October 16, 2021.

4 47. This action has been brought and may properly be maintained as a class action
5 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
6 litigation, the proposed class is easily ascertainable, and Plaintiff, a non-exempt employee of ITU,
7 who was subject to Defendant's policies and practices, was subject to all the violations of the
8 California Labor Code and Wage Order alleged herein, is a proper representative of the Class
9 defined above:

10 a. Numerosity: The potential members of the Class as defined are so numerous that
11 joinder of all the members of the Class is impracticable. According to ITU, ITU has employed
12 approximately 36 Class Members in California during the Class Period subject to ITU's policies
13 regarding wage statements, compensation, rest periods, meal periods, and expense
14 reimbursement. The Class Members are dispersed throughout California. Joinder of all members
15 of the proposed classes is therefore not practicable.

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

19 i. Whether ITU violated sections 1194, 1194.2, and 226.2 of the Labor Code
20 by failing to pay Plaintiff and the members of the Class separately and on an hourly basis for their
21 time spent on their statutory rest breaks and other non-teaching tasks engaged in by members of
22 the Class on a daily basis during the Class Period;

23 ii. Whether ITU violated Section 11 of IWC Wage Order No. 4 by failing to
24 provide compliant meal periods to Plaintiff and members of the Class in California during the
25 Class Period;

26 iii. Whether ITU violated Section 12 of IWC Wage Order No. 4 by failing to
27 provide paid rest periods to Plaintiff and the members of the Class in California during the Class
28 Period;

iv. Whether ITU violated Labor Code § 2802 by failing to reimburse Plaintiff and the Class Members for their business-related expenses during the Class Period;

v. Whether ITU violated Labor Code section 204 by not paying Plaintiff and the Members of the Class their wages owed within seven days of the close of payroll;

vi. Whether ITU violated Section 203 of the Labor Code by failing to pay former members of the Class for all wages due to them upon their separation of employment from Defendant;

vii. Whether ITU failed to provide Plaintiff and the members of the Class complete wage statements with information in violation of Labor Code Section 226(a) and 226.2;

viii. Whether ITU engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members of the Class separately and on an hourly basis for their time spent on statutory rest breaks and other non-teaching tasks, failing to provide compliant meal and rest periods, and by failing to reimburse them for work-related expenses including phone and home office expenses, during the Class Period;

ix. Whether ITU violated 2802 of the Labor Code and section 17203 of the California Business and Professions Code by failing to reimburse Plaintiff and the Class Members for their work-related expenses including home office expenses and personal cell phone expenses.

x. Whether Plaintiff and the Class are entitled to restitution under Business and Professions Code § 17200;

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

xii. The nature and extent of class-wide damages.

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

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and

adequately represent and protect the interests of the Class, and the Class Members. Plaintiff's interests do not conflict with those of the Class, or the Class Members. Counsel who represents Plaintiff are competent and experienced in litigating large wage and hour class actions, including numerous cases virtually identical to this one, and other employment class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and the Class Members.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of ITU unlawful policies and/or practices as described herein. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains ITU has enjoyed by maintaining its unlawful compensation policies and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter, for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from ITU, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a) and 226.2(a)(2)(A)-(B)]

On behalf of Plaintiff and the Wage Statement and Penalty Subclass Against Defendant

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

49. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment, to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee (unless the employee is exempt under Labor Code § 226(j);
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

50. During the Class Period, Defendant failed to issue wage statements to all Class members containing hours worked and hourly rates in violation of Labor Code § 226(a). Furthermore, the elements for exemption under 226(j) cannot be satisfied here since Class members did not earn twice the minimum wage based on a 40-hour work week.

51. Labor Code § 226(e) provides:

(1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

52. Defendant's failure to comply with section 226(a)(2) and (9) of the Labor Code

1 was knowing and intentional. There is no question, for example, that the Class members do not
2 qualify for the state professional exemption, since there is no plausible argument that they earned
3 two times the minimum wage based on a 40-hour work week.

4 53. As a result of Defendants' issuance of incomplete itemized wage statements to
5 Plaintiff and the other Class members in violation of section 226(a) of the California Labor Code,
6 Class members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
7 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every
8 member of the Class from Defendants pursuant to section 226(e) of the Labor Code, as well as
costs and reasonable attorneys' fees.

9
10 **SECOND CAUSE OF ACTION**
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802]
11 **On Behalf of Plaintiff and the Class Against Defendant**

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

14 55. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct consequence
16 of the discharge of his or her duties."

17 56. As described above, Defendant failed to reimburse Plaintiff and the Class for their
18 business-related expenses that were necessary to perform their jobs, such as printing expenses,
19 that were not reimbursed. Additionally, to perform their duties, Plaintiff, and the Class Members
20 also had to utilize their own personal work computers, cellphones, and home offices to perform
21 such tasks as (1) reading and responding to emails from students, co-workers, and supervisors, (2)
22 researching topics necessary to create and develop courses, and (3) participate in the mandatory
23 trainings required by the Defendant.

24 57. As a result, throughout the Class Period, Plaintiff and the Class incurred hundreds
25 of dollars per month in unreimbursed expenses for which they are entitled to be reimbursed, plus
26 interest.

27 58. Defendant's failure to pay for or reimburse the work-related business expenses of
28 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members

1 by Labor Code §2802. *See* Labor Code §2804. Plaintiff and similarly situated Class Members are
2 entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and
3 costs, under Labor Code § 2802(c).

4 **THIRD CAUSE OF ACTION**
5 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
6 **[Cal. Labor Code §§ 204, 210]**
7 **On Behalf of Plaintiff and the Class Against Defendant**

8 59. Plaintiffs re-allege and incorporate by reference each and every allegation set
9 forth in the preceding paragraph.

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

16 61. Due to Defendant’s failure to pay Plaintiff and the Class all minimum wages and
17 meal and rest break period premiums owed, Defendant violated Labor Code § 204 by failing to
18 pay all wages due within seven (7) days of the close of the payroll period on a regular and
19 consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
20 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period
21 premiums can support claims under Labor Code §§ 203 and 204); *cf. Naranjo*.

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

FOURTH CAUSE OF ACTION
FAILURE TO PAY SEPARATELY AND HOURLY FOR TIME SPENT
ON NON-TEACHING TASKS

[Cal. Labor Code §§ 1194; 1194.2, and 226.2]
On behalf of Plaintiff and the Class Against Defendant

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

64. Section 1194 of the Labor Code provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than 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.

65. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under...Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

66. As described above, during the Class Period, Plaintiff and the Class Members were paid on a per-course basis for teaching classes. But they were arguably not paid for non-teaching tasks. Further, Plaintiff and the Class Members took rest periods during the Class Period. However, because Plaintiff and the Class were only paid for their time teaching, they were not paid for their rest periods or non-teaching tasks, in violation of Labor Code § 1194.

67. Accordingly, during the Class Period, Plaintiff and the members of the Class did not receive minimum wage for their on-duty time spent taking statutory rest breaks and on non-teaching tasks.

68. In failing to Plaintiff and the Class Members for their time spent on rest periods and the non-teaching tasks separately, Defendant arguably operated in bad faith given the cases and the state of the law set forth above. Accordingly, pursuant to sections 1194, 1194.2, and 226.2 of the California Labor Code, Plaintiff and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the Class

1 Period for rest period time.

2 69. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also
3 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

4 **FIFTH CAUSE OF ACTION**
5 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND/OR PAY MEAL**
6 **PERIOD PREMIUMS**
7 **[Labor Code §§ 226.7, 512, and IWC Wage Order 4-2001]**
8 **On behalf of Plaintiff and the Class Against Defendant**

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

11 71. Labor Code § 512, and Section 11 of Wage Order 4-2001 require employers to
12 provide employees with thirty (30) minute uninterrupted and duty-free meal period within the
13 first five hours of work. Moreover, an employee who works more than ten (10) hours per day is
14 entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. *Brinker*
15 *Rest. Corp. v. Superior Court*, (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first meal periods
16 must start after no more than five hours."); See also *Munoz v. Guimarra Vineyards Corp.*, 2015
17 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding that meal periods must be taken within
18 the first five hours of work).

19 72. IWC Wage Order 4-2001, Section 11, further obligates employers to provide an
20 employee to "pay the employee one (1) hour of pay at the employee's regular rate of
21 compensation for each workday that the meal period is not provided." Labor Code § 226.7
22 provides "an employer shall not require an employee to work during a meal or rest or recovery
23 periods mandated pursuant to an applicable statute, or applicable regulation, standard, or order of
24 the Industrial Welfare Commission ("IWC"). IWC Wage Order 4-2001 prohibits an employer
25 from "employ[ing] any person for a work period of more than five (5) hours without a meal
26 period of not less than 30 minutes. Accordingly, for each day that Plaintiff and the Class did not
27 receive compliant meal periods, they are entitled to receive meal period premiums pursuant to
28 Labor Code § 226.7 and Wage Order 4-2001.

73. Here, despite what policies ITU may claim to have, they regularly deny Plaintiff
and the Class meal periods that comply with the substantive law on rare shifts over 5 hours. ITU

1 did not provide meal periods in compliance with Labor Code §§ 512, 226.7, and Wage Order 4-
2 2001. Nor does ITU keep track of when meal periods are taken, and as such, there are no records
3 of whether Plaintiff or the Class ever took a timely and complete meal period.

4 74. This failure to provide meal periods to Plaintiff and the Class, within the statutory
5 requirements of § 512 and Section 11(a) of Wage Order 4-2001, which again, as easily
6 confirmed by ITU's own records, is not the result of Plaintiff's choosing. As noted above,
7 Plaintiff worked at college university whereby she, and the other Class Members are not allowed
8 to take complaint off-duty meal periods. Thus, the failure of Plaintiff and the Class to take meal
9 periods with the first 5 hours of work, is not the result of any choice by Plaintiff and the Class,
10 but rather, is based on ITU's faulty policies, practices, and procedures.

11 75. Accordingly, for each day that Plaintiffs and the other Class members and
12 Aggrieved Employees did not receive compliant meal periods, they are entitled to receive meal
13 period premiums equal to one (1) hour of wages pursuant to Labor Code § 226.7 and Wage
14 Order 4-2001, in a sum to be proven at trial.

15 **SIXTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE PAID REST PERIODS**
17 **AND/OR PAY MISSED REST BREAK PREMIUMS**
18 **[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 4]**
19 **On behalf of Plaintiff and the Class Against Defendant**

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

22 77. California Labor Code § 226.7(a) provides, "No employer shall require any
23 employee to work during any meal or rest period mandated by an applicable order of the
24 Industrial Welfare Commission."

25 78. Section 12 of IWC Wage Order No. 9 provides: "(A) Every employer shall
26 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
27 the middle of each work period. The authorized rest period time shall be based on the total hours
28 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
thereof. However, a rest period need not be authorized for employees whose total daily work
time is less than three and one-half (3 1/2) hours. *Authorized rest period time shall be counted*

1 as hours worked for which there shall be no deduction from wages.” (emphasis added).

2 79. Courts have interpreted Section 12 of the applicable Wage Order to mean that
3 employees paid on a piece-rate must receive separate and hourly pay for their time spent on rest
4 breaks. *See, e.g., Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal. App. 4th 864, 872-73 (“Thus,
5 contrary to Safeway’s argument, a piece-rate compensation formula that does not compensate
6 separately for rest periods does not comply with California minimum wage law.”).

7 80. Here, Plaintiff and the Class Members were paid only for the credit hours spent
8 teaching, and not any other time. As a result, Plaintiff and the Class Members were never paid
9 separately and hourly for their rest periods, in violation of Section 12 of Wage Order 4-2001.

10 81. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
11 provided paid rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the
12 amount of one additional hour of pay at the employee’s regular rate of compensation for each
13 work period during each day in which Defendant failed to provide paid rest periods as required
14 by California law.

15 **SEVENTH CAUSE OF ACTION**
16 **WAITING TIME PENALTIES FOR**
17 **FAILURE TO PAY WAGES DUE ON TERMINATION**
18 **[Cal. Labor Code §§ 201-203]**

19 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against Defendant**

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

22 83. Sections 201 and 202 of the California Labor Code require Defendants to pay all
23 compensation due and owing to former employees in the Class during the actionable period for
24 this cause of action, at or around the time that their employment is terminated.

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

85. By virtue of failing to for time spent on non-teaching tasks, including at least rest
periods and minimum wages for all hours worked, Defendant willfully failed to pay Plaintiff and

1 other members of the waiting time penalty Class (i.e., those members of the Class whose
2 employment with Defendants ended the actionable period for this cause of action) who are no
3 longer employed by Defendant for their time spent on statutory rest breaks and the other Non-
4 Teaching Tasks prior to or upon termination or separation from employment with Defendant as
5 required by California Labor Code §§ 201 and 202. In addition, Class Members were
6 “discharged” at the conclusion of each contract, and in certain academic terms, their final pay for
7 the term was provided on the normal payroll schedule, which was not until after the discharge.

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

13 **EIGHTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION LAW VIOLATIONS**
15 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
16 **On Behalf of Plaintiff and the Class Against Defendant**

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

19 88. Section 17200 of the California Business & Professions Code prohibits any
20 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
21 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
22 action for violation of the UCL. Such a person may bring such an action on behalf of himself
23 and others similarly situated who are affected by the unlawful, unfair, or fraudulent business
24 practice.

25 89. Under section 17208 of the California Business and Professions Code, the statute
26 of limitations for a claim under Section 17200 is four years.

27 90. Section 90.5(a) of the Labor Code states that it is the public policy of California to
28 enforce vigorously 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

1 law from those who attempt to gain competitive advantage at the expense of their workers by
2 failing to comply with minimum labor standards.

3 91. As a direct and proximate result of Defendant's unlawful business practices,
4 Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from
5 its unlawful, unfair, and/or fraudulent acts and practices.

6 92. Plaintiff and similarly situated Class Members are entitled to monetary relief
7 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid wages, meal period
8 premiums, rest period premiums, and unreimbursed business expenses due and interest thereon,
9 from at least four years prior to the filing of this complaint through to the date of such restitution,
10 at rates specified by law. Defendant should be required to disgorge all the profits and gains it
11 has reaped and restore such profits and gains to Plaintiff and Class Members, from whom they
12 were unlawfully taken.

13 93. Through its actions alleged herein, Defendant has engaged in unfair competition
14 within the meaning of section 17200 of the California Business & Professions Code, because
15 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by
16 wrongfully denying them wages due for their time spent on rest periods and other non-teaching
17 tasks, wrongfully denying them reimbursement for business expenses, and wrongfully denying
18 them missed meal and rest period premiums, and therefore was substantially injurious to Plaintiff
19 and the Class Members.

20 94. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
21 the California Business & Professions Code by violating Sections 1194 and 226.2 of the
22 California Labor Code, and Sections 11 and 12 of the IWC Wage Order No. 4.

23 95. Defendant's course of conduct, act and practice in violation of the California laws
24 mentioned above constitute independent violations of sections 17200 et seq. of the California
25 Business and Professions Code.

26 96. Plaintiff and similarly situated Class Members are entitled to enforce all
27 applicable penalty provisions of the Labor Code pursuant to Business & Professions Code §
28 17202.

97. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendant in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code § 1194.

NINTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANT FOR
PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ. FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 512, 1194, 1197, 1197.1,
1198, 1199 and 2802; IWC WAGE ORDER 4**

98. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

99. Based on the above allegations incorporated by reference, Defendant has violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802 as well as IWC Wage Order 4-2001.

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

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

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

101. These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These penalties may be stacked separately for each of Defendant's violations of the California Labor Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be 'stacked,' *i.e.*, multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations."); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at

*1 (Ct. App. Sep. 26, 2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); accord *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

102. In addition, to the extent permitted by law, Defendant has failed to provide Plaintiff and all Aggrieved Employees with complete itemized wage statements in compliance with Labor Code § 226(a). Plaintiff seeks separate PAGA penalties for Defendant’s violations of Labor Code §§ 226(a) and 226(e). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after Friant that “[t]o the extent the Court’s Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section 226(a).”]). For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the other Aggrieved Employees are entitled to recover penalties for violations of Labor Code § 226.3 and seeks default PAGA penalties for each of Defendant’s numerous violations of Labor Code § 226(e).

103. Pursuant to Labor Code § 2699.3 (a), on October 19, 2020, Plaintiff gave written notice by certified mail to Defendant and to the LWDA of his claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802 as well as IWC Wage Order 4-2001, including theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of his PAGA claims on behalf of himself and all other current and former Aggrieved Employees of Defendants.

104. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendant's violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802 as well as IWC Wage Order 4-2001.

RELIEF REQUESTED

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself and the members of the Class, pray for judgment against Defendants as follows:

1. An Order that this action may proceed and be maintained as a class action;
2. On the First Cause of Action:
 - a. A declaratory judgment that Defendants violated California Labor Code § 226 and 226.3 by issuing inaccurate and/or incomplete wage statements;
 - b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).
3. On the Second Cause of Action:
 - a. A declaratory judgment that Defendants violated Labor Code § 2802;
 - b. Pursuant to 2802 (a)-(c), reimbursement for all the unreimbursed business-related expenses including home office expenses, printing expenses, and cell phone charges

1 incurred by Plaintiff and the Class, plus interest and attorney's fees.

2 4. On the Third Cause of Action:

3 a. A declaratory judgment that Defendant violated California Labor Code
4 §§ 204 and 210;

5 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and the
6 Class for penalties pursuant to Labor Code § 210.

7 5. On the Fourth Cause of Action:

8 a. A declaratory judgment that Defendant violated sections 1194, 1194.2, and
9 226.2 of the California Labor Code by failing to pay Plaintiff and other members of the Class
10 hourly and separately for their time spent on statutory rest periods and the non-teaching tasks
11 during the class period;

12 b. An award to Plaintiff and other members of the Class in the amount of their
13 unpaid wages owed to them for their time spent on statutory rest periods, plus interest and/or
14 liquidated damages during the class period;

15 c. An award to Plaintiff and the other members of the Class in the amount of
16 their unpaid wages owed to them for their time spent on the other non-teaching tasks during the
17 class period, plus interest; and/or liquidated damages;

18 d. An award to Plaintiff and the Class Members of their attorneys' fees and
19 costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the
20 California Labor Code and section 1021.5 of the California Code of Civil Procedure;

21 6. On the Fifth Cause of Action:

22 a. A declaratory judgment that Defendant violated California Labor Code
23 §§ 226.7, 512 and Section 11 of IWC Wage Order No. 4-2001;

24 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
25 Members for an hour of pay for each day that a compliant meal period was not provided during
26 the Class Period.

27 7. On the Sixth Cause of Action:

28 a. A declaratory judgment that Defendant violated California Labor Code §

226.7, and Section 12 of IWC Wage Order No. 4-2001;

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

8. On the Seventh Cause of Action:

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

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

9. On the Eighth Cause of Action:

a. That the Court find and declare that Defendant violated the UCL and committed unfair and unlawful business practices by failing to pay Plaintiff and Class Members on a separate and hourly basis for their rest break time and time spent on non-teaching tasks, by failing to pay missed rest break premiums, and by failing to reimburse Plaintiff and the Class for all their business-related expenses;

b. Restitution, including, but not limited to, the relief permitted by sections 1194, 226.2, and 2802 of the California Labor Code (i.e., pay as specified for time spent on the non-teaching tasks, and time spent on rest periods and reimbursement of all business-related expenses by Plaintiff and the members of the Class during the Class Period);

10. On the Ninth Cause of Action:

a. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for Plaintiff and all aggrieved employees because of Defendant's violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 1194, 1197, 1197.1, 1198, 1199, and 2802 as well as IWC Wage Order 4-2001;

b. A civil penalty against Defendant in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and all aggrieved employees for each and every pay period

1 during the PAGA Period;

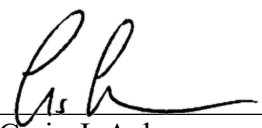
2 f. An award of reasonable attorney's fees against Defendant as specified in
3 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
4 with the PAGA claims;

5 g. An award of all costs incurred by the undersigned counsel for Plaintiff in
6 connection with Plaintiff's and the aggrieved employees' claims against Defendant as provided
7 for in Labor Code § 2699(g)(1);

8 11. Such other and further relief as this Court may deem proper and just.
9

10 Dated: November 23, 2021

ACKERMANN & TILAJEF, P.C.
INDIA LIN BODIEN, ATTORNEY AT LAW

11
12 By: 

13 Craig J. Ackermann, Esq.

14 India Lin Bodien, Esq.

15 *Attorneys for Plaintiff, the Class and Aggrieved*
16 *Employees*
17
18
19
20
21
22
23
24
25
26
27
28