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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

**DELFIN MERLAN, JOCELYN TOMAKA,
DIONNE MAXWELL and JEROME
CRICHTON**, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

**ALLIANT INTERNATIONAL
UNIVERSITY, INC.**, a California
Corporation,

Defendant.

**CASE NO. 37-2019-00064053-CU- OE-CTL
FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) FAILURE TO PAY ALL MINIMUM
WAGES (LABOR CODE §§ 226.2, 1194,
1194.2, 1197);
(2) FAILURE TO PROVIDE COMPLIANT
REST PERIODS AND/OR PAY MISSED
REST BREAK PREMIUMS (LABOR CODE
§ 226.2, 226.7; IWC WAGE ORDER NO. 4-
2001);
(3) FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS AND/OR PAY MISSED
MEAL PERIOD PREMIUMS (LABOR
CODE § 226.7, 512; IWC WAGE ORDER
NO. 4-2001);
(4) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE §2802);
(5) WAITING TIME PENALTIES (LABOR
CODE § 201-203);
(6) FAILURE TO ISSUE ACCURATE
ITEMIZED WAGE STATEMENTS (CAL.
LABOR CODE §§ 226(A), (E); 226.2(A);
(7) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204); AND
(8) CIVIL PENALTIES UNDER PRIVATE
ATTORNEYS GENERAL ACT (CAL.
LABOR CODE § 2699)**

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1 Plaintiffs Delfin Merlan, Jocelyn Tomaka, Dionne Maxwell and Jerome Crichton
2 (“Plaintiffs”) on behalf of themselves and all others similarly situated (hereinafter “Class Members”),
3 complain and alleges as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiffs bring this action, on behalf of themselves and all similarly situated
6 individuals for Alliant International University, Inc., (“Defendant”): (1) failure to pay minimum
7 wages; (2) failure to provide paid rest breaks and/or pay missed rest break premiums; (4) failure to
8 provide meal periods and/or pay missed meal period premiums; (5) failure to reimburse business
9 expenses; (6) failure to pay all wages due to its former employees upon discharge based on the
10 foregoing; (7) failure to issue accurate itemized wage statements; and (8) unfair business practices
11 based on the foregoing. As a result of the foregoing, Defendant has violated California statutory
12 laws as described below.

13 2. Plaintiffs seek to represent a “Class” consisting of all individuals who are or were
14 employed by Defendant or its predecessors or merged entities in California as adjunct professors
15 and/or instructors and/or in any other similar capacity from December 2, 2015 through December
16 31, 2019.

17 3. The “Class Period” is designated as the period from December 2, 2015 through
18 December 31, 2019.

19 4. The “Wage Statement Class Period” is defined as October 16, 2019 through October
20 31, 2020.

21 5. Plaintiff Tomaka also brings this action as a representative action under the
22 California Labor Code’s Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.*,
23 for civil penalties on behalf of herself and Aggrieved Employees for the Labor Code violations
24 alleged above. The “PAGA Period” is defined as October 16, 2019 to October 31, 2020.

25 **JURISDICTION AND VENUE**

26 6. This Court has subject matter jurisdiction over all causes of action asserted herein
27 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure §
28 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of

1 interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State
2 of California or is subject to adjudication in the courts of the State of California.

3 7. This Court has personal jurisdiction over Defendant because Defendant has caused
4 injuries in the County of San Diego and State of California through their acts, and by their violation
5 of the California Labor Code and California state common law.

6 8. This Court has jurisdiction over Plaintiff Tomaka's claims for PAGA civil penalties
7 under Labor Code § 2699. On October 16, 2020, Plaintiff Tomaka provided PAGA Notice pursuant
8 to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and
9 Defendant. On February 11, 2021 Plaintiff Tomaka provided an Amended PAGA Notice to the
10 LWDA and Defendant. The LWDA provided no notice to Plaintiff Tomaka within the period
11 specified in Labor Code § 2699.3 regarding its intention to investigate or not investigate any other
12 claims alleged in the PAGA Notice. Plaintiff Tomaka has therefore fully complied with the PAGA
13 procedural requirements and may commence this representative action pursuant to Labor Code §
14 2699.

15 9. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
16 Procedure § 395. Defendant operates within California and does business within San Diego County,
17 California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all employees
18 within the State of California and San Diego County.

18 **PARTIES**

19 10. Plaintiff Merlan, is a resident of California and at all times pertinent hereto worked
20 for Defendant as an adjunct professors in San Diego County.

21 11. Plaintiff Tomaka is a resident of California and at all times pertinent hereto worked
22 for Defendant as an adjunct professor in San Diego County.

23 12. Plaintiff Maxwell is a resident of California and at all times pertinent hereto worked
24 for Defendant as an adjunct professor in San Diego County

25 13. Plaintiff Jerome Crichton is a resident of California and at all times pertinent hereto
26 worked for Defendant as an adjunct professor in San Diego County.

27 14. Upon information and belief, Plaintiffs and Class Members, employees are covered
28 by California Industrial Welfare Commission Occupational Wage Order No. 4-2001.

15. Alliant International University, Inc., is a California for-profit benefit corporation, operating within the State of California. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant has done and does business throughout the State of California including San Diego County.

FACTUAL BACKGROUND

16. During the Class Period, Plaintiffs and Class Members were paid based on Alliant International University's uniform payment plan on a piece-rate basis in the amount of a flat sum piece rate per credit hour or flat rate per course. Additionally, Plaintiffs and Class Members, were also paid a flat sum piece rate for each workshop that they taught during his and their employment with Alliant International University.

17. As adjunct professors, *in addition to their teaching duties*, Plaintiffs and Class Members, were expected to prepare all documents necessary for the course, grade any papers or tests associated with the course, develop their own syllabus, and be available to students and actually met with students for their questions. Thus, for each hour spent teaching the courses and/or workshops assigned to him and them, Plaintiffs and Class Members, spent more hours outside of the classroom engaging in the duties necessary to complete his course.

18. Additionally, Plaintiffs and Class Members were expected to supply their students with paper hand-outs and other materials necessary for their courses, which Plaintiffs and Class Members would have to prepare and print at their own expense. Plaintiffs and Class Members were further expected to utilize their home computers and personal cellphones to read and respond to emails and other communications sent to them by their students, other Alliant International University faculty, and their supervisors. Despite being required to incur expenses to perform their duties, Plaintiffs and Class Members were never reimbursed for their business expenses.

19. As noted above, Plaintiffs and Class Members were paid on a set amount per credit hour for each course they taught or were paid a flat piece rate for each course taught. This amount was not tied to the number of hours Plaintiffs and Class Members worked, but rather, was a form of piece-rate compensation based on the number of courses they taught, or the number of credits taught. As a result, Plaintiffs and Class Members, were paid on a piece-rate basis, and were thus non-exempt employees. *See Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398 (holding that to be

1 exempt, an employee must be paid on a salary basis and defining the term as being the same under
2 California law as it is under federal law). In fact, Plaintiffs' total compensation for the year was well
3 below the twice the minimum wage requirement of Cal. Labor §515(a) and (c).

4 20. Concerning the misclassification itself, under Labor Code Section 515(a), the IWC
5 is empowered to create and implement exemptions in its Wage Orders, including Wage Order No. 4
6 covering educators, for *inter alia* professional employees, provided that such individuals exercise
7 discretion and independent judgment in their teaching jobs, meet other criteria for the exemption, and
8 earn a monthly salary equivalent to two times the state minimum wage for "full-time
9 employment." The phrase "Full time employment" is defined in Section 515(c) as "40 hours per
10 week". See also Wage Order No. 4, section 1(A)(3)(d) (incorporating the twice state minimum wage
11 requirement into the Wage Order's exemption). Thus, to meet the elements of professional
12 exemption in California, since the applicable state minimum wage was \$11 per hour in 2018 and \$12
13 per hour in 2019, a California university would have to pay its adjunct professors no less than \$960
14 on a bi-weekly basis (i.e., 40 hours * \$11 per hour * 2), and no less than \$1,920 on a monthly basis
15 (40 hours per week * \$11 per hour * 2 * 4 weeks). Defendant's adjuncts, including Plaintiffs and
16 other adjuncts employed by Defendant during the Class Period, earned less than these amounts on a
17 bi-weekly and monthly basis. As a result, they were wrongfully misclassified as salaried,
18 professional exempt employees for purposes of California law. Thus, Plaintiffs and Class Members
19 were non-exempt.

Plaintiffs and Class Members Were Not Compensated for All Hours Worked

20 21. California Labor Code § 226.2 governs compensation paid to piece-rate employees,
21 like Plaintiffs and the Class Members. It states, in relevant part:

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

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

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

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

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

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

13 22. Thus, according to Cal. Labor Code § 226.2, employees who are paid on a piece-
14 rate basis, such as Plaintiffs and Class Members must be compensated for all the hours that they
15 work, including non-productive time.

16 23. This, however, did not happen at Alliant International University. Plaintiffs and
17 Class Members were not paid for many activities that occurred outside of teaching their classes, such
18 as, but not limited to (1) creating course materials, such as syllabi, in-class and homework
19 assignments, tests and quizzes; (2) building daily school, either manually to the dean or electronically
20 through Defendant's online portal; (3) grading assignments, tests and quizzes; (4) assisting students
21 with their coursework by consulting with students outside of class time and during breaks to provide
22 regular and timely feedback; (5) advising students in matters relating to academics, vocational goals,
23 attendance, and behavior; (6) conducting student retention and re-entry activities; (7) completing
24 professional development and in-service activities in accordance with Alliant International
25 University's standards; and (8) attending faculty meetings ("non-teaching tasks").

26 24. Labor Code § 1197 states the California requirement that employees must be paid
27 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
28 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal
minimum wage ... to recover in a civil action the unpaid balance of the full amount of this minimum
wage." IWC Wage Order Nos. 4-2001 at § 4 also obligates employers to pay each employee minimum
wages for all hours worked.

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

6 26. Defendant violated Labor Code §§ 1194 and 1197 as well as IWC Wage Order No.
7 4-2001 through their consistent policy of failing to pay Plaintiffs and Class Members, for all the hours
8 that they worked, instead only paying them for their time providing instruction, and not any of the
9 time associated with preparing the instruction to their students. As a result, they were forced to work
10 on a regular and consistent basis without receiving compensation for all hours worked at the proper
11 rate.

Plaintiffs and Class Members Were Not Provided with Legally Compliant Rest Periods

12 27. Pursuant to Labor Code § 226.7, and Wage Order 4-2001, Alliant International
13 University failed to provide Plaintiffs and Class Members with compensated, duty-free rest periods
14 of not less than ten (10) minutes for every major fraction of four hours worked.

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

20 29. During the Class Period, Alliant International University failed to implement a
21 lawful rest period policy that informed Plaintiffs and Class Members, of their right to receive lawful
22 rest periods for shifts that were more than at least a major fraction of four hours worked. Specifically,
23 Alliant International University failed to advise Plaintiffs and Class Members, of their right to take
24 paid duty-free ten (10) minute rest periods when working on a piece-rate basis and failed to separately
25 compensate Plaintiffs and Class Members, for the non-productive time associated with their rest
26 periods. *See Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864,872 (2013), reh'g denied (June
27 18, 2013), review denied (Aug. 28, 2013) ("rest periods must be separately compensated in a piece-
28 rate system. Rest periods are considered hours worked and must be compensated.") (*citing Armenta*
v. Osmose, Inc. 135 Cal.App.4th 314,323 (2005)).

1 30. Here, as in *Bluford*, Alliant International University compensated Plaintiffs and
2 Class Members, by way of a piece-rate system for each credit hour taught. As a result, when they
3 were not teaching, but rather taking a mandated rest period, they were not compensated for their time,
4 in violation of Labor Code section 226.7 and Wage Order 4-2001.

5 31. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Alliant International
6 University failed to provide Plaintiffs and Class Members with duty-free rest periods of not less than
7 ten (10) minutes for every major fraction of four (4) hours worked. Specifically, Alliant International
8 University failed to have a lawful rest period policy in place that informed Plaintiffs and Class
9 Members of their right to take rest periods for shifts that were a major fraction of a four (4) hour work
10 period and to make rest breaks available to these employees.

11 32. The *Brinker* Court explained in the context of rest breaks that employer liability
12 attaches from adopting an unlawful policy:

13 An employer is required to authorize and permit the amount of rest break time called
14 for under the wage order for its industry. If it does not-if, for example, it adopts a
15 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.

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

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

1 May 19, 2016) *aff'd Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 20 I 6 WL 4440966, at * 11
2 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. Case No. 0:16-23f-80120 (9th Cir. Nov. 16, 2016).
3 Here, again, Plaintiffs and Class Members were never properly compensated for their rest periods,
4 and as such, Alliant International University violated the law.

5 34. During the Class Period, Defendant maintained policies and/or practices that
6 impeded Plaintiffs and Class Members' ability to take off-duty 10-minute rest periods during shifts
7 that were at least a major fraction of four hours. These policies and/or practices included, but were
8 not limited to, arriving early to prepare for class, and being available to students before, during, and
9 after class.

10 35. In addition, Plaintiffs, the Class Members, were not compensated with one (1) hours'
11 worth of pay at their regular rate of compensation when they were not provided with a compliant rest
12 period.

12 **Plaintiffs and Class Members Were Not Provided with Legally Compliant Meal Periods**

13 36. Labor Code § 512 requires employers to provide employees with thirty (30) minute
14 uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee
15 who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute
16 uninterrupted and duty-free meal period. "An on-duty meal period is permitted only when the nature
17 of the work prevents an employee from being relieved of all duty and the parties agree in writing to
18 an on-duty paid meal break." *Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932. The
19 written agreement must include a provision allowing the employee to revoke it at any time. *Id.* Here,
20 Plaintiffs and Class Members were never asked to sign any agreement agreeing to an on-duty meal
21 period.

22 37. Generally, the DLSE and courts have "found that the nature of the work exception
23 applies: '(1) where the work has some particular external force that requires the employee to be on
24 duty at all times, and (2) where the employee is the sole employee of a particular employer.' *Id.* at p.
25 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) "[I]t is the
26 employer's obligation to determine whether the nature of the work prevents an employee from being
27 relieved *before* requiring an employee to take an on-duty meal period." *Lubin, supra*, 5 Cal. App. 5th
28 at p. 946. Nor may an employer "discharge its duty by arguing that its clients who requested on-duty
meal periods determined that the nature of the work prevented officers from being relieved of all

1 duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729. Here, because Plaintiffs, and the
2 Class Members were never asked to sign an on-duty meal period agreement, Defendant clearly
3 investigated the issue, and determined that the nature of the work of Plaintiffs and Class Members
4 does not allow for on-duty meal periods. Nonetheless, Defendant did not authorize or permit off-duty
5 meal periods.

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

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

14 *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

15 39. Defendant violated Labor Code § 512 by failing to advise Plaintiffs and Class
16 Members of their right to receive thirty (30) minute uninterrupted meal periods within the first five
17 hours of the employee’s shift. Defendant’s policies were such that Plaintiffs and Class Members were
18 prevented from taking meal periods of 30 minutes as required by law.

19 40. Defendant further violated Labor Code § 512 by requiring Plaintiffs and Class
20 Members to work through their meal periods, even Plaintiffs and Class Members were never asked
21 to sign a legally compliant on-duty meal period form.

22 41. As a result of Defendant’s failure to authorize or permit lawful meal periods,
23 Plaintiffs and Class Members frequently did not receive duty-free meal periods within the first five
24 (5) hours of their work. Defendant also failed to pay Plaintiffs and Class Members meal period
25 premiums for each workday that the employees did not receive a compliant meal period.

26 42. Labor Code § 226.7 provides “an employer shall not require an employee to work
27 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
28 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, under IWC
Wage Order 4-2001 prohibits an employer from “employ[ing] any person for a work period of more
than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 4-2001 further

1 obligates employers to provide an employee to “pay the employee one (1) hour of pay at the
2 employee’s regular rate of compensation for each workday that the meal period is not provided.
3 Accordingly, for each day that Plaintiffs and Class Members did not receive compliant meal periods,
4 they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order
5 4-2001.

Plaintiffs and the Class Were Not Reimbursed for Their Business Expenses

6 43. As noted above, Plaintiffs and Class Members, regularly incurred expenses during
7 the course of their employment, such as printing expenses, that were not reimbursed. Additionally,
8 to perform their duties, Plaintiffs and Class Members also had to utilize their own personal work
9 computers, cellphones, and home offices to perform such tasks as (1) reading and responding to
10 emails from students, co-workers, and supervisors, (2) researching topics necessary to create and
11 develop courses, and (3) participate in the mandatory trainings required by the Defendant. Yet,
12 Plaintiffs and Class Members were never reimbursed for any of these expenses.

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

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

17 45. Section 2802(c) of the Labor Code defined “necessary” to include “reasonable”
18 expenses. Thus, employees such as Plaintiffs and Class Members are entitled to reimbursement for
19 the expenses they incurred and continue to incur during the course of their duties. The duty to
20 reimburse even extends to the use of equipment the employee may already own and would be required
21 to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 (“The
22 threshold question in this case is this: Does an employer always have to reimburse an employee for
23 the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement
24 obligation limited to the situation in which the employee incurred an extra expense that she or she
25 would not have otherwise incurred absent the job? The answer is that reimbursement is always
26 required. Otherwise, the employer would receive a windfall because it would be passing its operating
27 expenses on to the employee.”) After all, the purpose of 2802 is to “prevent employers from passing
28

1 along their operating expenses onto their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007)
2 42 Cal. 4th 554, 562.

3 46. Here, throughout the Class Period, Alliant International University has no policy to
4 reimburse Plaintiffs and Class Members for their reasonable and necessary business expenses.
5 Plaintiff, the Class Members, and the Aggrieved Employees regularly incurred expenses, and due to
6 the lack of any reimbursement policy and Defendant’s failure to affirmatively reimburse Class
7 Members for known expenses incurred in connection with work, they had to bear the burden of these
8 costs alone.

9 **Plaintiffs and the other Former Employees Were Not Paid All Their Wages Owed Upon**
10 **Discharge**

11 46. As a result of Alliant International University’s failure to pay Plaintiffs and Class
12 Members, for all hours worked, including non-productive time, Alliant International University
13 violated Labor Code § 203. Labor Code § 203 provides “if an employer willfully fails to pay . . . any
14 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
15 a penalty...” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

16 47. Due to Alliant International University’s faulty policies described above, Plaintiffs
17 and Class Members whose employment with Alliant International University concluded were not
18 compensated for each and every hour worked or at the appropriate rate. Additionally, Alliant
19 International University has failed to pay all former for all hours worked at the time of discharge.

20 **Defendant Failed to Issue Accurate Itemized Wage Statements**

21 48. During the Wage Statement Class Period, defined as October 16, 2019 through
22 October 31, 2020, Defendant failed to issue accurate itemized wage statements to Plaintiffs Tomaka
23 and Maxwell and Class Members. In particular, from October 16, 2019 through December 31, 2019,
24 because Class Members were non-exempt, Defendant was required to furnish them with wage
25 statements that containing (1) gross wages earned, (2) total hours worked by the employee, (3) net
26 wages earned, and (4) all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee, pursuant to subdivisions (a)(1), (a)(2),
28 (a)(5) and (a)(9) of § 226(a). Additionally, because Class Members were piece-rate workers,
Defendant was required, but failed, to furnish wage statements to them that contained, including but

1 not limited to, the following information: the number of piece-rate units earned and any applicable
2 piece rate; compensable rest periods, the rate of compensation, and gross wages paid for those rest
3 break periods; and hours of nonproductive time, the rate of compensation, and gross wages paid for
4 nonproductive time during the pay period pursuant to Labor Code § 226(a)(3) and § 226.2(a).

5 49. During the Wage Statement Class Period, Defendant was also required under Labor
6 Code § 226(a)(8) to furnish Class Members with wage statements containing the “address of the legal
7 entity that is the employer.” However, Defendant furnished Wage Statement Class Members with
8 wage statements that contained the address for Defendant’s San Francisco campus, rather than
9 Defendant’s address on file with the California Secretary of State, in violation of Labor Code §
10 226(a)(8).

11 50. During the Wage Statement Class Period, Defendant was also required under Labor
12 Code §§ 226(a)(9) to furnish Class Members with wage statements containing their hourly rates.
13 However, from January 1, 2020 until October 31, 2020, Alliant reimbursed Class Members for their
14 out-of-pocket business expenses at the rate of \$1.00 per hour worked and included this reimbursement
15 on Wage Statement Class Members’ wage statements. However, rather than list the amount of
16 reimbursement separately on wage statements issued to Wage Statement Class Members, Alliant
17 combined it with Wage Statement Class Members’ hourly rate. As a result, the listed hourly rate was
18 \$1.00 higher than the actual hourly wage rate, because the rate included \$1.00 of expense
19 reimbursement. Alliant therefore issued wage statements with an inaccurate hourly rate in violation
20 of Labor Code §§ 226(a)(9).

21 51. Defendant’s practice of furnishing Wage Statement Class Members incomplete
22 and/or inaccurate wage statements in violation of Labor Code § 226(a) was knowing and intentional,
23 as it was not an isolated and unintentional payroll error due to a clerical or inadvertent mistake, but
24 rather the result of Defendant’s regular compensation policies.

25 52. Wage Statement Class Members could not promptly and easily determine from the
26 wage statements alone, without reference to other document or information, including wage
27 statements from previous pay periods, the employers’ address, their regular hourly rate, the total
28

hours worked at that rate, the total hours worked during a pay period, or the number of pieces worked.
As a result, Wage Statement Class Members suffered injury for the purposes of Labor Code § 226(e).

CLASS ACTION ALLEGATIONS

48. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent:

“All individuals who are or were employed by Defendant or its predecessors or merged entities in California as adjunct professors and/or instructors and/or in any other similar capacity, from four years prior to the filing of this Complaint to the present and ongoing.”

49. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiffs, a non-exempt employee of Alliant International University, who was subject to Defendant’s policies and practices, was subject to all the violations of the California Labor Code and Wage Order alleged herein, is a proper representative of the Classes defined above:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe that Defendant has, on average, during the Class Period employed over 800 Class Members in California subject to Defendant’s policies regarding piece rate compensation, rest period compensation, and expense reimbursement. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

i. Whether Defendant violated sections 1194, 1194.2, and 226.2 of the Labor Code by failing to pay Plaintiffs and the members of the Class separately and on an hourly basis for their time spent on their statutory rest breaks and other non-teaching tasks engaged in by members of

1 the Class on a daily basis during the Class Period;

2 ii. Whether Defendant violated Section 12 of IWC Wage Order No. 4 by failing
3 to provide paid rest periods to Plaintiffs and the members of the Class in California during the Class
4 Period;

5 iii. Whether Defendant violated 226.7, 512, and Wage Order 4-2001 by not
6 relieving Plaintiffs and Class Members of all duties during their statutorily mandated meal periods;

7 iv. Whether Defendant violated Labor Code sections 226.7, 512, and Wage
8 Order 4-2001 failing to pay one hour of premium pay to each member of the Class for each day that
9 an off-duty meal period was not provided in California during the Class Period;

10 v. Whether Defendant violated Labor Code section 226.7 and Wage Order 4-
11 2001 by not relieving Plaintiffs and the members of the Class of all duties during their statutorily
12 mandated rest periods;

13 vi. Whether Defendant violated Labor Code section 226.7 by failing to pay one
14 hour of premium pay to each member of the Class for each day that an off-duty rest break was not
15 provided in California during the Class Period;

16 vii. Whether Defendant violated Labor Code § 2802 by failing to reimburse
17 Plaintiffs and the Class Members for their business-related expenses during the Class Period;

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

21 ix. Whether Defendant violated Labor Code sections 226.2 and/or 1194 by not
22 paying adjuncts separately and hourly for all Non-Teaching time worked, including time spent
23 meeting with students, grading papers, and/or in preparation for class, etc.

24 x. Whether Defendant violated Labor Code §§ 226 (a)(1), (a)(2), (a)(3), (a)(5)
25 and (a)(9) and 226.2(a)(2) by failing to issue accurate itemized wage statements to Plaintiffs Maxwell
26 and Tomaka and Wage Statement Class Members;

27 xi. Whether Defendant violated Labor Code §§ 226 (a)(8) by failing to issue
28 wage statements to Plaintiff Maxwell and Tomaka and Wage Statement Class Members and Wage

1 Statement Class Members that included the address of the entity that is the employer;

2 xii. Whether the Wage Statement Class is entitled to injunctive relief;

3 xiii. Whether Defendant's failure to issue itemized wage statements was knowing
4 and intentional;

5 xiv. Whether Plaintiff Maxwell and Tomaka and Wage Statement Class
6 Members suffered injury for the purposes of Labor Code § 226(e);

7 xv. Whether Defendant engaged in an unfair practice and violated Business and
8 Professions Code § 1720;

9 xvi. Whether Plaintiffs and the Class are entitled to restitution under Business
10 and Professions Code § 17200;

11 xvii. The proper formula(s) for calculating damages, interest, penalties and
12 restitution owed to Plaintiffs and the Class Members;

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

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

18 d. Adequacy of Representation: Plaintiffs are members of the Class and will
19 fairly and adequately represent and protect the interests of the Class, and the Class Members.
20 Plaintiffs interests do not conflict with those of the Class. Counsel who represents Plaintiffs are
21 competent and experienced in litigating large wage and hour class actions, including numerous cases
22 virtually identical to this one, and other employment class actions, and will devote sufficient time and
23 resources to the case and otherwise adequately represent the Class and the Class Members.

24 e. Superiority of Class Action: A class action is superior to other available
25 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
26 Members is not practicable, and questions of law and fact common to the Class predominate over any
27 questions affecting only individual members of the Class. Each Class Member has been damaged or
28 may be damaged in the future by reason of Defendant's 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 Defendant 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 Defendant, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST 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 Plaintiffs and the Class Against Defendant

50. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

51. 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 entitle 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.

52. 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.

53. As described above, during the Class Period, Plaintiffs and the Class Members were paid on a per-unit basis for teaching classes. They were misclassified as salaried exempt professionals, but were not exempt and were not truly salaried either. Instead, they were paid on a piece-rate basis, but were not paid separately and hourly for non-teaching tasks, including, but not

1 limited to (1) creating course materials, such as syllabi, in-class and homework assignments, tests
2 and quizzes; (2) building daily school, either manually to the dean or electronically through
3 Defendant's online portal; (3) grading assignments, tests and quizzes; (4) assisting students with their
4 coursework by consulting with students outside of class time and during breaks to provide regular
5 and timely feedback; (5) advising students in matters relating to academics, vocational goals,
6 attendance, and behavior; (6) conducting student retention and re-entry activities; (7) completing
7 professional development and in-service activities in accordance with Alliant International
8 University's standards; and (8) attending faculty meetings. Plaintiffs and the Class were only paid
9 for their time teaching, they were not paid for their rest periods or non-teaching tasks, in violation of
10 Labor Code § 1194.

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

14 55. In failing to pay Plaintiffs and the Class Members for their time spent on rest periods
15 and the non-teaching tasks separately particularly after the issue of *Gonzalez* and *Bluford* in 2013,
16 and certainly for any violations after January 1, 2016, when Section 226.2 became effective,
17 Defendant operated in bad faith given the cases and the state of the law set forth above. Accordingly,
18 pursuant to sections 1194, 1194.2, and 226.2 of the California Labor Code, Plaintiffs and the Class
19 are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or
20 liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld
21 during the Class Period for rest period time.

22 56. Pursuant to section 1194.2 of the Labor Code, Plaintiffs and the Class are also
23 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PROVIDE PAID REST PERIODS**
26 **AND/OR PAY MISSED REST BREAK PREMIUMS**
27 **[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 4]**
28 **On Behalf of Plaintiffs and the Class Against Defendant**

27 57. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
28 in the preceding paragraphs.

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

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

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

16 61. Here, during the Class Period, Plaintiffs and the Class Members were paid only for
17 the credit hours spent teaching, and not any other time. As a result, Plaintiffs and the Class Members
18 were never paid separately and hourly for their rest periods, in violation of Section 12 of Wage Order
19 4-2001.

20 62. As a result of the unlawful acts of Defendant, Plaintiffs and the Class were not
21 provided paid rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the amount
22 of one additional hour of pay at the employee’s regular rate of compensation for each work period
23 during each day in which Defendant failed to provide paid rest periods as required by law.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS AND/OR PAY MISSED**
26 **MEAL PERIODS PREMIUMS**

27 **[Cal. Labor Code § 226.7, 512; SECTION 11 OF IWC WAGE ORDER NO. 4]**

28 **On Behalf of Plaintiffs and the Class Against Defendant**

 63. Plaintiffs re-allege and incorporate by reference each and every allegation set forth

1 in the preceding paragraphs.

2 64. At all times relevant herein, Section 11050 of 8 California Code of Regulations
3 provided in relevant part:

4 A. No employer shall employ any person for a work period of more than five
5 (5) hours without a meal period of not less than 30 minutes, except that when a work
6 period of not more than six (6) hours will complete the day's work the meal period
may be waived by mutual consent of the employer and the employee.

7 B. An employer may not employ an employee for a work period of more than
8 ten (10) hours per day without providing the employee with a second meal period
9 of not less than 30 minutes, except that if the total hours worked is no more than 12
10 hours, the second meal period may be waived by mutual consent of the employer
and the employee only if the first meal period was not waived.

11 C. Unless the employee is relieved of all duty during a 30-minute meal period,
12 the meal period shall be considered an "on duty" meal period and counted as time
13 worked. An "on duty" meal period shall be permitted only when the nature of the
14 work prevents an employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is agreed to. The
written agreement shall state that the employee may, in writing, revoke the
agreement at any time.

15 D. If an employer fails to provide an employee a meal period in accordance
16 with the applicable provisions of this order, the employer shall pay the employee
17 one (1) hour of pay at the employee's regular rate of compensation for each workday
that the meal period is not provided.

18 65. Likewise, California Labor Code Section 512(a): An employer may not employ an
19 employee for a work period of more than five hours per day without providing the employee with a
20 meal period of not less than 30 minutes, except that if the total work period per day of the employee
21 is no more than six hours, the meal period may be waived by mutual consent of both the employer
22 and employee.

23 66. California Labor Code Section 226.7 requires an employer to pay an additional hour
24 of compensation for each meal period the employer fails to provide in accordance with the applicable
25 statute or Industrial Welfare Commission Wage Order.

26 67. As alleged herein, during the Class Period, Defendant failed to provide Plaintiffs
27 and Class Members with meal periods in accordance with the applicable Industrial Welfare
28 Commission Wage Order and California Labor Code Sections 226.7 and 512.

1 68. Pursuant to California Labor Code Section 226.7, Plaintiffs and other members of
2 the Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal period,
3 in a sum to be proven at trial.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 **[Cal. Labor Code § 2802]**

7 **On Behalf of Plaintiffs and the Class Against Defendant**

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

10 70. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
12 the discharge of his or her duties.” Section 2802(c) defined “necessary” to include “reasonable”
13 expenses.

14 71. As described above, during the Class Period, Defendant failed to reimburse
15 Plaintiffs and the Class for their business-related expenses that were necessary and/or reasonably-
16 incurred to perform their jobs, such as printing expenses, cell phone related expenses and other
17 expenses, that were not reimbursed. To perform their duties, Plaintiff, and the Class Members also
18 had to utilize their own personal work computers, cellphones, and home offices to perform such tasks
19 as (1) reading and responding to emails from students, co-workers, and supervisors, (2) researching
20 topics necessary to create and develop courses, and (3) participate in the mandatory trainings required
21 by the Defendant.

22 72. As a result, throughout the Class Period, Plaintiffs and the Class incurred
23 unreimbursed expenses for which they are entitled to be reimbursed, plus interest.

24 73. Defendant’s failure to pay for or reimburse the work-related business expenses of
25 Plaintiffs and Class Members violated non-waivable rights secured by Labor Code § 2802. *See* Labor
26 Code § 2804. Plaintiffs and similarly situated Class Members are entitled to reimbursement for these
27 all reasonable expenditures, plus interest and attorneys’ fees and costs, under Labor Code § 2802(c).

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FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES FOR
FAILURE TO PAY WAGES DUE ON DISCHARGE
[Cal. Labor Code §§ 201-203]
On Behalf of Plaintiffs and the Waiting Time Penalty Subclass Against Defendant

79. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

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

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

82. By virtue of failing to for time spent on non-teaching tasks, including at least rest periods and minimum wages for all hours worked, during the Class Period Defendant willfully failed to pay Plaintiffs and other members of the waiting time penalty Class (i.e., those members of the Class whose employment with Defendant ended during the actionable period for this cause of action) who are no longer employed by Defendant for their time spent on statutory rest breaks and the other Non-Teaching Tasks prior to or upon termination or separation from employment with Defendant as required by California Labor Code §§ 201 and 202.

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

SIXTH CAUSE OF ACTION
FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS
[Cal. Labor Code §§ 226(a), (e); 226.2(a)]
On Behalf of Plaintiffs Tomaka and Maxwell and the Wage Statement Subclass Against Defendant

1 82. Plaintiffs Tomaka and Maxwell re-allege and incorporate by reference each and
2 every allegation set forth in the preceding paragraphs.

3 83. From October 16, 2019 until December 31, 2019, Defendant failed to furnish
4 Plaintiffs Tomaka and Maxwell and Wage Statement Class Members with accurate itemized wage
5 statements by failing to list on their wage statements (1) gross wages earned, (2) total hours worked
6 by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the
7 employee is paid on a piece-rate basis, (4) net wages earned, and (5) all applicable hourly rates in
8 effect during the pay period and the corresponding number of hours worked at each hourly rate by
9 the employee, in violation of Labor Code § 226(a)(1), (2), (3), (5), and (9).

10 84. Defendant also failed to furnish Plaintiffs Tomaka and Maxwell and Wage
11 Statement Class Members with accurate itemized wage statements in violation of Labor Code §
12 226.2(a)(2) by failing to itemize compensable rest periods, the rate of compensation, and gross wages
13 paid for those rest break periods; and hours of nonproductive time, the rate of compensation, and
14 gross wages paid for nonproductive time during the pay period.

15 85. From January 1, 2020 until October 31, 2020, as a result of its failure to list the
16 amount of reimbursement separately from Wage Statement Class Members' hourly rate, Defendant
17 failed to furnish Plaintiffs Tomaka and Maxwell and Wage Statement Class Members with accurate
18 wage statements containing their correct hourly rates in violation of Labor Code §§ 226(a)(9).

19 86. During the Wage Statement Class Period, Defendant failed to furnish Plaintiffs
20 Tomaka and Maxwell and Wage Statement Class Members with accurate wage statements by failing
21 to include Defendant's correct address, in violation of Labor Code § 226(a)(8).

22 87. Defendant's failure to furnish accurate itemized wage statements to Plaintiffs
23 Tomaka and Maxwell and Wage Statement Class Members was knowing and intentional.

24 88. Plaintiffs Tomaka and Maxwell and Wage Statement Class Members suffered injury
25 as a result of Defendant's knowing and intentional failure to comply with Labor Code §§ 226(a) and
26 226.2(a) for purposes of Labor Code § 226(e)

27 89. As a result, Wage Statement Class Members are entitled to recover \$50 for each
28 initial pay period with a violation, and \$100 for each subsequent pay period with a violation, up to

1 an amount not exceeding an aggregate penalty of \$4,000 for each Wage Statement Class Member,
2 pursuant to Labor Code § 226(e).

3 90. Plaintiffs Tomaka and Maxwell, on behalf of themselves and all other Wage
4 Statement Class Members, request relief as described below.

5 **SEVENTH CAUSE OF ACTION**
6 **UNFAIR COMPETITION LAW VIOLATIONS**
7 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
8 **On Behalf of Plaintiffs and the Class Against Defendant**

9 84. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
10 in the preceding paragraphs.

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

16 86. Under section 17208 of the California Business and Professions Code, the statute of
17 limitations for a claim under Section 17200 is four years.

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

23 88. As a direct and proximate result of Defendant’s unlawful business practices,
24 Plaintiffs and the Class Members have suffered economic injuries. Defendant has profited from its
25 unlawful, unfair, and/or fraudulent acts and practices.

26 89. Plaintiffs and similarly situated Class Members are entitled to monetary relief
27 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid wages, rest period
28 premiums, and unreimbursed business expenses due and interest thereon, from at least four years
prior to the filing of this complaint through to the date of such restitution, at rates specified by law.

1 Defendant should be required to disgorge all the profits and gains it has reaped and restore such
2 profits and gains to Plaintiffs and Class Members, from whom they were unlawfully taken.

3 90. Through its actions alleged herein, Defendant has engaged in unfair competition
4 within the meaning of section 17200 of the California Business & Professions Code, because
5 Defendant's conduct, as herein alleged has damaged Plaintiffs and the Class Members throughout
6 the Class Period by wrongfully denying them wages due for their time spent on rest periods and other
7 non-teaching tasks, wrongfully denying them reimbursement for business expenses, and wrongfully
8 denying them missed rest period premiums, and therefore was substantially injurious to Plaintiffs and
9 the Class Members.

10 91. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
11 the California Business & Professions Code by violating Sections 1194, 226.2 and 2802 of the
12 California Labor Code, and Section 12 of the IWC Wage Order No. 4.

13 92. Defendant's course of conduct, act and practice in violation of the California laws
14 mentioned above constitute independent violations of sections 17200 et seq. of the California
15 Business and Professions Code.

16 93. Plaintiffs and similarly situated Class Members are entitled to enforce all applicable
17 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

18 94. Plaintiffs have assumed the responsibility of enforcement of the laws and public
19 policies specified herein by suing on behalf of themselves and other similarly situated Class Members
20 previously or presently employed by Defendant in California. Plaintiff's success in this action will
21 enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in
22 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
23 Plaintiffs are appropriate pursuant to C.C.P. §1021.5, and Labor Code § 1194.

24 **SEVENTH CAUSE OF ACTION**

25 **Civil Penalties**

26 **[Cal. Labor Code § 2698 et seq.]**

27 **On Behalf of Plaintiff Tomaka and the Aggrieved Employees Against Defendant**

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

1 96. Plaintiff Tomaka is an “aggrieved employee” under PAGA because she was
2 employed by Defendant during the applicable statutory period and suffered one or more of the Labor
3 Code violations alleged herein. As such, Plaintiff Tomaka seeks to recover, on behalf of herself and
4 all other currently and formerly employed aggrieved employees of Defendant, civil penalties under
5 PAGA, plus reasonable attorneys’ fees and costs.

6 97. Plaintiff Tomaka seeks to recover the PAGA penalties through a representative
7 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
8 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff
9 Tomaka may choose to seek certification of the PAGA claims.

10 98. Plaintiff Tomaka seeks PAGA penalties on behalf of herself and Aggrieved
11 Employees against Defendant for the following violations:

12 ***Violation of Labor Code § 226.2 and 1194***

13 99. During the PAGA Period, and until December 31, 2019, Defendant did not
14 compensate Aggrieved Employees separately and hourly for the Non-Teaching Tasks they were
15 required to perform. Thus, Defendant failed to pay for non-productive time, separately and apart
16 from the piece, as required under Labor Code §§ 226.2 and 1194.

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

20 ***Violation of Labor Code §§ 226.2 and 226.7***

21 101. During the PAGA Period, and until December 31, 2019, Defendant failed to
22 compensate Aggrieved Employees for their time spent on rest breaks separately and apart from the
23 piece, failed to authorize and permit paid rest breaks, and failed to pay missed rest break premiums
24 in violation of Labor Code §§ 226.2 and 226.7, as described above.

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

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3 ***Violation of Labor Code §§ 226.7 and 512***

4 103. During the PAGA Period, and until December 31, 2019, Defendant failed to provide
5 off-duty meal breaks and pay missed meal break premiums in violation of Labor Code § 226.7, as
6 described above.

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

10 ***Violation of Labor Code §§ 2802***

11 105. During the PAGA Period, and until December 31, 2019, Defendant failed to
12 reimburse Aggrieved Employees for their necessarily incurred business expenses, in violation of
13 Labor Code § 2802, as described above.

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

17 ***Violation of Labor Code §§ 226(a) and 226.2(a)***

18 107. During the PAGA Period, and until December 31, 2019, Defendant failed to issue
19 accurate itemized wage statements to Aggrieved Employees that included (1) gross wages earned,
20 (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece rate, (4)
21 net wages earned (5) total hours of compensable rest and recovery periods; (6) rate of compensation
22 for rest and recovery periods; (7) gross wages paid for compensable rest and recovery periods; (8)
23 total hours of nonproductive time; (9) rate of compensation for nonproductive time; and (10) gross
24 wages paid for nonproductive time, violation of Labor Code §§ 226(a) and 226.2(a).

25 108. During the PAGA Period, specifically from January 1, 2020 until October 31, 2020
26 Defendant failed to issue accurate wage statements to Aggrieved Employees including their accurate
27 hourly rate in violation of Labor Code § 226(a)(9).
28

109. During the PAGA Period, Defendant failed to issue accurate wage statements to Aggrieved Employees including the address of the legal entity that is the employer in violation of Labor Code § 226(a)(8).

110. Under Labor Code § 2699(f)(2), Plaintiff Tomaka and Aggrieved Employees are entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved Employee for each initial violation of Labor Code § 226(a), and two hundred dollars (\$200) per pay period for each subsequent violation.

JURY DEMAND

95. Plaintiffs hereby demand trial by jury of his and the Class's claims against Defendant.

RELIEF REQUESTED

Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, pray for judgment against Defendant 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 Defendant violated sections 1194, 1194.2, and 226.2 of the California Labor Code by failing to pay Plaintiffs and other members of the Class hourly and separately for their time spent on statutory rest periods and the non-teaching tasks during the class period;

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

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

d. An award to Plaintiffs and the Class Members of their attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the California Labor Code and section 218.5 of the Labor Code;

1 3. On the Second Cause of Action:

2 a. A declaratory judgment that Defendant violated California Labor Code §
3 226.7, and Section 12 of IWC Wage Order No. 4-2001;

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

7 4. On the Third Cause of Action:

8 a. A declaratory judgment that Defendant violated California Labor Code §
9 226.7 and 512, and Section 12 of IWC Wage Order No. 4-2001;

10 b. Pursuant to Cal. Labor Code § 226.7 and IWC Wage Order No. 4, Section
11 11, an award to Plaintiffs and the Class Members for an hour of pay at their regular rate of pay, for
12 each day that a compliant meal period was not provided during the Class Period;

13 5. On the Fourth Cause of Action:

14 a. A declaratory judgement that Defendant violated Labor Code § 2802;

15 b. Pursuant to Labor Code § 2802 (a)-(c), reimbursement for all the reasonably-
16 incurred unreimbursed business-related expenses including home office expenses, printing
17 expenses, and cell phone charges incurred by Plaintiffs and the Class, plus interest and attorney's
18 fees.

19 7. On the Fifth Cause of Action:

20 a. A declaratory judgment that Defendant violated California Labor Code §§
21 201 through 203;

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

25 8. On the Sixth Cause of Action:

26 a. A declaratory judgment that Defendant violated California Labor Code §§
27 226(a), (e) and/or 226.2(a);

1 b. Pursuant to Labor Code § 226(e), an award to Plaintiffs Tomaka and
2 Maxwell and each Class Member employed during the Wage Statement Class Member of \$50 for
3 each initial pay period with a violation, and \$100 for each subsequent pay period with a violation,
4 up to an amount not exceeding an aggregate penalty of \$4,000; and an award reasonable attorneys'
5 fees and cost.

6 8. On the Seventh Cause of Action:

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

12 b. Restitution, including, but not limited to, the relief permitted by sections
13 1194, 226.2, and 2802 of the California Labor Code (i.e., pay as specified for time spent on the non-
14 teaching tasks, and time spent on rest periods and non-teaching time, and reimbursement of all
15 business-related expenses by Plaintiffs and the members of the Class during the Class Period);

16 9. On the Eight Cause of Action:

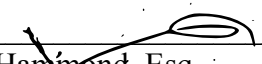
17 a. An award PAGA Civil Penalties, as well as attorneys' fees and costs,
18 pursuant to Labor Code § 2699; and

19 10. Such other and further relief as this Court may deem proper and just.

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21 Dated: June 7, 2021

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