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CODY GRIFFITH
7 Representative of the State of California,
on behalf of Aggrieved Employees
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO
11

12 CODY GRIFFITH, an Individual, on
behalf of himself and all other aggrieved
13 employees of Defendants in the State of
California,

14 Plaintiff,

15 vs.
16

17 SWING EDUCATION, INC., a Delaware
Corporation; and DOES 1-100, Inclusive,

18 Defendants.
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County of San Diego

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Clerk of the Superior Court
By Aida Cruz, Deputy Clerk

Case No. 37-2021-00016141-CU-OE-CTL

UNLIMITED CIVIL CASE

REPRESENTATIVE ACTION

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF CALIFORNIA'S
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LAB. CODE, § 2698, *ET*
SEQ.):**

1. **VIOLATION OF PAGA FOR
WILLFUL MISCLASSIFICATION
OF EMPLOYEE AS
INDEPENDENT CONTRACTOR
(Cal. Lab. Code § 226.8, *et seq.*);**
2. **VIOLATION OF PAGA FOR
FAILURE TO PROVIDE
ITEMIZED WAGE
STATEMENTS (Cal. Lab. Code §§
226(a), 226.3);**
3. **VIOLATION OF PAGA FOR
FAILURE TO PROVIDE TIMELY
AND ACCURATE ITEMIZED
WAGE STATEMENTS (Cal. Lab.
Code §§ 226(a), 226.3, 2699(f)(2));**
4. **VIOLATION OF PAGA FOR
FAILURE TO PAY REGULAR**

1 **WAGES (Cal. Lab. Code § 204 and**
2 **2699(f)(2), *et seq.*);**

3 **5. VIOLATION OF PAGA FOR**
4 **FAILURE TO PAY MINIMUM**
5 **WAGES (Cal. Lab. Code § Cal.**
6 **Lab. Code §§ 1182.12, 1194 *et seq.*,**
7 **1197, 1198, 2699(f)(2); IWC Wage**
8 **Order No. 4-2001);**

9 **6. VIOLATION OF PAGA FOR**
10 **FAILURE TO INDEMNIFY FOR**
11 **NECESSARY, WORK-RELATED**
12 **EXPENDITURES (Cal. Lab. Code**
13 **§§ 2802 and 2699(f)(2));**

14 **7. VIOLATION OF PAGA FOR**
15 **FAILURE TO TIMELY PAY ALL**
16 **WAGES DUE UPON**
17 **TERMINATION OF**
18 **EMPLOYMENT (Cal. Lab. Code**
19 **§§ 201-202, 208, and 2699(f)(2));**

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff CODY GRIFFITH (“GRIFFITH”), as a representative for the State of
22 California, on behalf of himself and all other California aggrieved employees of Defendant
23 SWING EDUCATION, INC. (“SWING EDUCATION” or the “COMPANY”) alleges as
24 follows:

25 **Nature of the Action**

26 1. This is a representative action brought by GRIFFITH in accordance with
27 California’s Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.*
28 (the “PAGA”), on behalf of himself and other current and former aggrieved California
employees of Defendant SWING EDUCATION whom Defendants subjected to the wage and
hour violations described in this Complaint and willfully misclassified as contractors to work
at Defendant’s K-12 educational staffing agency for substitute teachers during the relevant
liability periods.

2. The class of aggrieved workers under the PAGA is composed of all
individuals who work for or have worked for SWING EDUCATION as substitute teachers
on an independent contractor basis, as well as those whom Defendants have otherwise

1 subjected to Labor Code violations, including unpaid regular wages; unpaid minimum
2 wages; wage statements that were inaccurate, untimely, and/or not provided at all;
3 unreimbursed necessary, work-related expenses; nonpayment of final wages on termination
4 of employment; and the like (the “PAGA Aggrieved Employees”) in the State of California
5 from August 12, 2019 to the final judgment (the “PAGA Period”).

6 3. Plaintiff, by this action, seeks injunctive relief, penalties, and any other remedies
7 the Court deems just due to the illegal conduct of Defendants, as alleged herein.

8 Jurisdiction and Venue

9 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code
10 of Civil Procedure section 395. Defendant SWING EDUCATION is a Delaware corporation
11 that, on information and belief, employs hundreds of employees in San Diego County, thereby
12 conducting significant business in San Diego County, and each Defendant is within the
13 jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have
14 a direct effect on Plaintiff and those similarly aggrieved within the State of California and
15 within San Diego County. There is no federal question at issue, as the issues herein are based
16 solely on California statutes and law, including the Labor Code, IWC Wage Order No. 4, Code
17 of Civil Procedure, and Civil Code.

18 5. Further, as a purely representative action under PAGA, the matter is not subject
19 to removal under 28 U.S.C. sections 1332(a)-(d).

20 The Parties

21 6. Plaintiff GRIFFITH is, and at all relevant times was, a competent adult residing
22 in San Diego County, California.

23 7. On information and belief, Defendant SWING EDUCATION is, and at all
24 relevant times was, a Delaware corporation doing business and operating in San Diego County,
25 California.

26 8. Plaintiff is unaware of the true names, capacities, relationships, and extent of
27 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 100,
28 but, on information and belief, alleges that said Defendants are legally responsible for the

wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

9. On information and belief, Plaintiff alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees, and exercised control over their wages, hours, and working conditions. On information and belief, Plaintiff alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

General Allegations

10. SWING EDUCATION is a privately held, close corporation that functions as an educational staffing agency. Its primary service is to provide substitute teachers to its clients, which consist of public, private, and charter schools and school districts teaching kindergarten through the 12th grade, as well as special education. To this end, SWING EDUCATION recruits and maintains a pool of qualified substitute teachers to place with its clients on a project basis. SWING EDUCATION maintains clients and substitute teacher workers throughout California and, on information and belief, in other states across the U.S. On information and belief, SWING EDUCATION has operated continuously in the foregoing fashion since its inception in or around 2015.

11. GRIFFITH has worked as a substitute teacher with SWING EDUCATION continually since in or around March 2019. From the time GRIFFITH commenced work for the COMPANY until at least on or about November 3, 2020, the COMPANY willfully engaged GRIFFITH as a purported independent contractor instead of as an employee. On information and belief, the COMPANY engaged all its California-based substitute teachers as purported independent contractors instead of as employees throughout the relevant liability periods through a portion of November 2020.

12. In or around early November 2020, the COMPANY announced that, going forward, it would begin to reclassify all its California-based contract substitute teachers to W-2

1 employees. To that end, the COMPANY promulgated to its California-based substitute
2 teachers a webinar orientation that explained their reclassification from contractor to W-2
3 status and all attendant changes. On information and belief, any substitute teacher wishing to
4 continue working for the COMPANY was required to view this webinar orientation prior to
5 his or her next “commitment” (i.e., COMPANY project or assignment).

6 13. On or about November 5, 2020, the COMPANY also sent emails to its
7 California-based substitute teachers memorializing their conversion from purported
8 independent contractors to W-2 employees going forward. On information and belief, these
9 email communications also informed the substitute teachers that the COMPANY would be
10 using ADP as its payroll service provider and that they would be paid weekly instead of
11 semimonthly going forward.

12 14. For purposes of this Complaint, August 9, 2019 through November 3, 2020 will
13 be referred to as the “MISCLASSIFICATION PERIOD.”

14 15. For purposes of this Complaint, November 3, 2020 through any final judgment
15 of this action will be referred to as the “W-2 PERIOD.”

16 16. Throughout his apparent employment with the COMPANY, GRIFFITH was
17 typically paid on an hourly basis, depending on the specific “commitment” to which he was
18 assigned. His typical compensation was \$22.00 per hour.

19 17. Throughout the MISCLASSIFICATION PERIOD, the COMPANY paid
20 GRIFFITH and his aggrieved peers on a semi-monthly basis. This compensation was typically
21 direct deposited into their individual bank accounts. The COMPANY never required
22 GRIFFITH or, on information and belief his aggrieved peers, to submit any invoice to collect
23 payment for their substitute teacher services. Nor did the COMPANY ever issue to GRIFFITH
24 or, on information and belief his aggrieved peers, any corresponding paystubs with typical W-
25 2 tax withholdings. Rather, GRIFFITH and, on information and belief his aggrieved peers,
26 were always paid on a 1099 basis during the MISCLASSIFICATION PERIOD.

27 18. Throughout the W-2 PERIOD, the Company has paid GRIFFITH and his
28 aggrieved peers on a weekly basis, issuing corresponding paystubs with each paycheck.

1 19. Throughout the relevant liability periods, GRIFFITH and his aggrieved peers
2 fulfilled their substitute teaching duties and responsibilities in accordance with what the
3 COMPANY referred to as “commitments.” These commitments were essentially classroom
4 projects or assignments of varying length, from a portion of a school day to one spanning the
5 entire school year. The COMPANY typically memorialized each commitment in some
6 tangible written form. The commitment typically included an estimated length of assignment
7 for the assigned substitute teacher, the scope of courses to be taught, teacher compensation,
8 and the like.

9 20. Throughout the relevant liability periods, GRIFFITH’s typical work schedule
10 varied depending on the commitment to which he was assigned. Some commitments were
11 fleeting in nature, comprised of substitute teaching for just a single school day or week. Some
12 commitments endured or were contemplated to endure for an entire school semester or longer.
13 On information and belief, the PAGA Aggrieved Employees worked on similar varying
14 commitments throughout the relevant liability periods.

15 21. Throughout the relevant liability periods, GRIFFITH, during a typical workday,
16 was required to spend time preparing for course instruction (i.e., “prep time”), teach classes
17 (i.e., “course time”), spend time in between classes due to student disciplinary issues or to
18 answer student questions (i.e., “student interaction time”), and spend time after the conclusion
19 of the school day interfacing with school administration and parents regarding student
20 disciplinary and other issues (i.e., “after hours’ time”). On information and belief, the PAGA
21 Aggrieved Employees engaged in the foregoing activities during a typical workday.

22 22. Throughout the relevant liability periods, the COMPANY generally paid
23 GRIFFITH, and on information and belief the PAGA Aggrieved Employees, for course time;
24 and for prep time, though usually in connection with a longer-term commitment (i.e., at least
25 one month in duration) only. Throughout the relevant liability periods, the COMPANY
26 typically has not paid GRIFFITH, and on information and belief the PAGA Aggrieved
27 Employees, for student interaction time and after hours’ time.

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1 23. During the MISCLASSIFICATION PERIOD, the COMPANY typically did
2 not require GRIFFITH, and on information and belief the PAGA Aggrieved Employees, to
3 record their time worked. Throughout the W-2 PERIOD, the COMPANY has required
4 GRIFFITH and the PAGA Aggrieved Employees to record their time worked through ADP's
5 timekeeping system (i.e., "admin time"). To this end, the COMPANY requires its employees
6 to log into ADP weekly using a unique username and passcode and enter time punches for the
7 week. The COMPANY has maintained a policy and practice that employee time spent entering
8 time worked is not compensable, even though this activity typically took GRIFFITH and, on
9 information and belief the PAGA Aggrieved Employees, upwards of 15 minutes or more per
10 week to complete. Under the principles of *Troester v. Starbucks* (2018) 5 Cal.5th 829, this
11 regularly occurring off-the-clock work is compensable.

12 24. Throughout the relevant liability periods, substantive course instruction during
13 GRIFFITH's typical workday was generally scheduled from about 7 or 7:30 a.m. to about 3 or
14 3:30 p.m., depending on the school and commitment. Although GRIFFITH is usually able to
15 take a 30-minute lunch break, he is never able to take a second 30-minute lunch breaks on the
16 occasions where his cumulative course and non-course time exceeds 10 hours in a day. On
17 information and belief, the PAGA Aggrieved Employees have been subjected to the same or
18 similar noncompliant lunch practice.

19 25. Throughout the relevant liability periods, non-course time sometimes made is
20 reasonably impracticable for GRIFFITH, and on information and belief the PAGA Aggrieved
21 Employees, to take paid rest breaks of 10 uninterrupted minutes.

22 26. Throughout the relevant liability periods, GRIFFITH and the PAGA Aggrieved
23 Employees, have been compelled to use personal devices to teach their courses; to interface
24 with the COMPANY, students, school administration; to enter and submit their hours worked
25 through the ADP platform; and the like. Under the principles of *Cochran v. Schwan's Home*
26 *Service, Inc.* (2014) 228 Cal.App.4th 1137 (2014), GRIFFITH and the PAGA Aggrieved
27 Employees are owed a reasonable reimbursement for their necessary use of their personal
28 devices for work-related purposes. The COMPANY has never reimbursed GRIFFITH or, on

1 information and belief the PAGA Aggrieved Employees, for using their personal devices for
2 necessary, work-related tasks.

3 27. On information and belief, PAGA Aggrieved Employees who stopped working
4 for the COMPANY or separated from employment with the COMPANY during the PAGA
5 Period are still owed wages, in violation of California's final pay laws.

6 PAGA Designation

7 28. Throughout the PAGA Period, Defendants have violated and, on information
8 and belief, continue to violate provisions of the Labor Code, including §§ 201, 202, 204, 208,
9 226, 226.7, 226.8, 1182.12, 1174, 1194, 1197, 1198, and 2802.

10 29. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, like
11 Plaintiff, on behalf of himself or herself and other current or former employees, to bring a civil
12 action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

13 30. Plaintiff has complied with the procedures for bringing suit specified in Labor
14 Code § 2699.3. On or about February 5, 2021, GRIFFITH notified the California Labor &
15 Workforce Development Agency (the "LWDA") of the Labor Code violations to which he and
16 his aggrieved peers were subjected, and on information and belief, continue to be subjected.
17 Thereafter, he timely served this PAGA notice on Defendants by certified mail, in compliance
18 with the PAGA statute. A true and correct copy of that notice (without attached proposed
19 complaint) is attached hereto as Exhibit 1 and is incorporated herein by this reference. The
20 alleged violations are not curable. The LWDA failed to notify this representative Plaintiff by
21 certified mail that it does not intend to investigate the alleged violations within 60 calendar
22 days of the postmark date of the notice filing and failed to send any notice within 65 days of
23 Plaintiff's filing of the notice of its intention to investigate Plaintiff's claimed violations.

24 31. Pursuant to Labor Code § 2699.3, subdivision (a)(2), Plaintiff may seek civil
25 penalties under the PAGA, codified at Labor Code §§ 2698, *et seq.*

26 32. Plaintiff further demands reasonable attorney's fees, costs of suit, and interest
27 pursuant to California Labor Code §§ 2699(g)(1).

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1 Tolling Period

2 33. The Judicial Council Emergency Rule 9, as amended May 29, 2020, suspended
3 from April 6, 2020 to October 1, 2020 the statutes of limitations and repose for civil causes of
4 action that exceed 180 days. The statute of limitations for Plaintiff's representative action
5 claims under PAGA exceeds 180 days. As such, for purposes of Plaintiff's representative
6 claims, the statutory period relates back from on or about August 12, 2020.

7 First Cause of Action

8 **FOR CIVIL PENALTIES FOR WILLFUL MISCLASSIFICATION**
9 **OF EMPLOYEE AS INDEPENDENT CONTRACTOR**
10 **(Cal. Lab. Code § 226.8)**

11 **By Plaintiff and PAGA Aggrieved Employees Against All Defendants**

12 34. Plaintiff incorporates the preceding paragraphs.

13 35. Labor Code § 226.8(a) makes it unlawful for any person or an employer to
14 willfully misclassify an individual as an independent contractor.

15 36. A worker is *presumed* to be an employee unless the hiring entity establishes: (a)
16 the worker is free from control and direction over performance of the work, both under the
17 contract and in fact; (b) the work provided is outside the usual course of business for which
18 the work is performed; *and* (c) the worker is customarily engaged in an independently
19 established trade, occupation, or business. *Dynamex Operations West, Inc. v. Superior Court*
20 (2018) 4 Cal. 5th 903, 916-917; Cal. Lab. Code § 2750.3. The foregoing "ABC" test, as
21 announced in *Dynamex*, applies retroactively to all nonfinal cases governed by the Labor Code
22 and industry wage orders that predate the effective date of the *Dynamex* decision. *Vazquez v.*
23 *Jan-Pro Franchising International, Inc.* (2021) Cal. LEXIS 1, *6. As such, the ABC test was in
24 effect throughout the MISCLASSIFICATION PERIOD and governs whether GRIFFITH
25 and the PAGA Aggrieved Employees were misclassified as independent contractors in this
26 action.

27 37. Defendants knowingly and voluntarily chose to designate GRIFFITH and the
28 PAGA Aggrieved Employees as independent contractors throughout the

1 MISCLASSIFICATION PERIOD. On information and belief, Defendants' pattern and
2 practice of willfully misclassifying their employees as independent contractors was calculated
3 to avoid payroll taxes, avoid payment of proper wages and entitlements to workers, and to
4 gain an unfair competitive advance over rival businesses. During this time, Defendants paid
5 GRIFFITH and, on information and belief the PAGA Aggrieved Employees, their hourly
6 compensation on a semimonthly basis via direct deposit. On information and belief, no
7 withholdings were taken from these semimonthly payments issued to GRIFFITH and the
8 PAGA Aggrieved Employees; nor, on information and belief, were GRIFFITH and the
9 PAGA Aggrieved Employees provided any corresponding wage and hour statements
10 identifying the bases for the compensation amount and any deductions.

11 38. Throughout the MISCLASSIFICATION PERIOD, Defendant SWING
12 EDUCATION effectively functioned as a substitute teacher staffing agency to schools and
13 school districts throughout California and beyond, which needed substitute teachers to teach
14 courses on short- and long-term bases. SWING EDUCATION maintained a pool of qualified
15 substitute teachers, like GRIFFITH and the PAGA Aggrieved Employees, to place with its
16 school and school district clients. Defendants unilaterally facilitated the placement of its
17 substitute teachers with its clients, collected fees from their clients, and paid their substitute
18 teachers directly. Moreover, the substitute teachers provided appropriate grade-level
19 instruction to Defendants' school and school district clients; GRIFFITH and the PAGA
20 Aggrieved Employees did not provide any services beyond substitute teaching. Accordingly,
21 Defendants cannot, as a matter of law, establish each prong of the ABC test announced in
22 *Dynamex*, rendering the presumption that GRIFFITH and the PAGA Aggrieved Employees
23 were in an employment relationship with SWING EDUCATION irrebuttable.

24 39. Subdivision (c) of Labor Code § 226.8 provides for civil penalties for violations
25 of its subdivision (a). If the person or employer has engaged in a pattern or practice of willful
26 misclassification, the person or employer shall be subject to a civil penalty of not less than ten
27 thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
28 violation, in addition to any other penalties or fines permitted by law.

1 40. Plaintiff, as a personal representative of the state and general public, will and
2 does seek to recover any and all penalties for each and every violation shown to exist or to
3 have occurred under Labor Code section 226.8 during the applicable limitations period, in an
4 amount according to proof.

5 **Second Cause of Action**

6 **FOR CIVIL PENALTIES FOR FAILURE TO FAILURE TO PROVIDE**

7 **ITEMIZED WAGE STATEMENTS**

8 **(Cal. Lab. Code §§ 226, 226.3)**

9 **By Plaintiff and PAGA Aggrieved Employees Against All Defendants**

10 41. Plaintiff incorporates the preceding paragraphs.

11 42. Labor Code § 226(a) required Defendants, “semimonthly or at the time of each
12 payment of wages,” to furnish Plaintiff and the PAGA Aggrieved Employees “an accurate
13 itemized statement in writing” showing gross and net wages earned, total hours worked by
14 the employee/employees, rates of pay, and other information. Defendants knowingly and
15 intentionally failed to provide Plaintiff and the PAGA Aggrieved Employees with such wage
16 and hour statements.

17 43. Throughout the MISCLASSIFICATION PERIOD, Defendants never issued
18 any wage statements to GRIFFITH and, on information and belief all the PAGA Aggrieved
19 Employees.

20 44. Defendants thus required Plaintiff and the PAGA Aggrieved Employees to work
21 under conditions prohibited by order of the IWC, in violation of those orders.

22 45. Plaintiff and the PAGA Aggrieved Employees suffered injury as a result of
23 Defendants’ knowing and intentional failure to provide them with the wage and hour
24 statements required by law.

25 46. Labor Code § 226.3 provides for civil penalties for violations of Labor Code §
26 226(a). The civil penalty is \$250 for the initial violation and \$1000 for each subsequent
27 violation.

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47. Plaintiff, as a personal representative of the state and general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred under Labor Code section 226(a) during the applicable limitations period, in an amount according to proof.

Third Cause of Action

**FOR CIVIL PENALTIES FOR FAILURE TO FAILURE TO PROVIDE
TIMELY AND ACCURATE ITEMIZED WAGE STATEMENTS**

(Cal. Lab. Code §§ 226, 226.3, 2699(f)(2))

By Plaintiff and PAGA Aggrieved Employees Against All Defendants

48. Plaintiff incorporates the preceding paragraphs.

49. Labor Code § 226(a) required Defendants, “semimonthly or at the time of each payment of wages,” to furnish Plaintiff and the PAGA Aggrieved Employees “an accurate itemized statement in writing” showing gross and net wages earned, total hours worked by the employee/employees, rates of pay, and other information. Defendants knowingly and intentionally failed to provide Plaintiff and the PAGA Aggrieved Employees with such wage and hour statements.

50. Throughout the W-2 PERIOD, Defendants have routinely failed to pay GRIFFITH, and on information and belief the PAGA Aggrieved Employees, for non-course time each pay period. As a result, Defendants have routinely failed to issue inaccurate pay stubs to GRIFFITH, and on information and belief the PAGA Aggrieved Employees.

51. Defendants thus required Plaintiff and the PAGA Aggrieved Employees to work under conditions prohibited by order of the IWC, in violation of those orders.

52. Plaintiff and the PAGA Aggrieved Employees suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements required by law.

53. Labor Code § 226.3 provides for civil penalties for violations of Labor Code § 226(a). The civil penalty is \$250 for the initial violation and \$1000 for each subsequent violation. Alternatively, Labor Code § 2699(f)(2) generally provides for civil penalties for

1 violations of the Labor Code that do not have a corresponding penalty provision. Insofar as
2 section 226.3 does not apply to the violation canvassed herein, the civil penalty is \$100 for the
3 initial violation and \$200 for each subsequent violation.

4 54. Plaintiff, as a personal representative of the state and general public, will and
5 does seek to recover any and all penalties for each and every violation shown to exist or to
6 have occurred under Labor Code section 226(a) during the applicable limitations period, in an
7 amount according to proof.

8 **Fourth Cause of Action**

9 **FOR CIVIL PENALTIES FOR FAILURE TO PAY REGULAR WAGES**

10 **(Cal. Lab. Code §§ 204, 210)**

11 **By Plaintiff and PAGA Aggrieved Employees Against All Defendants**

12 55. Plaintiff incorporates the preceding paragraphs.

13 56. Throughout the relevant liability periods, Defendants failed to pay Plaintiff and
14 the PAGA Aggrieved Employees the wages that they earned, as required by the Labor Code
15 and the Wage Order. Defendants have routinely failed to pay GRIFFITH, and on information
16 and belief the PAGA Aggrieved Employees, for hours worked during non-course time each
17 pay period.

18 57. Throughout the relevant liability periods, Defendants have knowingly and
19 voluntarily chosen not to pay GRIFFITH, and on information and belief the PAGA Aggrieved
20 Employees, for all hours they worked in non-substantive course or instruction duties.

21 58. Defendants thus required Plaintiff and the PAGA Aggrieved Employees to work
22 under conditions prohibited by order of the IWC, in violation of those orders.

23 59. Labor Code § 210 provides for civil penalties for violations of Labor Code § 204.
24 The civil penalty is \$100 for the initial violation for each failure to pay each employee and \$200
25 for each subsequent violation *or any willful or intentional violation* for each failure to pay each
26 employee, plus 25% of the amount(s) unlawfully withheld.

27 60. Plaintiff, as a personal representative of the state and general public, will and
28 does seek to recover any and all penalties for each and every violation shown to exist or to have

1 occurred under Labor Code § 204 during the applicable limitations period, in an amount
2 according to proof.

3 **Fifth Cause of Action**

4 **FOR CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM WAGES**

5 **(Cal. Lab. Code §§ 1182.12, 1194 *et seq.*, 1197, 1198, 2699(f)(2);**

6 **IWC Wage Order No. 4-2001)**

7 **By Plaintiff and PAGA Aggrieved Employees Against All Defendants**

8 61. Plaintiff incorporates the preceding paragraphs.

9 62. Plaintiff and the PAGA Aggrieved Employees are entitled to minimum wage as
10 provided under the Labor Code and the Wage Orders.

11 63. The Labor Code and Wage Order 4-2001, which govern professional
12 occupations such as substitute teaching, provide that an employer must pay a minimum wage
13 to an employee, which is \$11.00 per hour beginning January 1, 2018, \$12.00 per hour beginning
14 January 1, 2019, \$13.00 per hour beginning January 1, 2020, and \$14.00 per hour beginning
15 January 1, 2021. Section 4(A)(1).

16 64. Defendants have routinely failed to pay GRIFFITH, and on information and
17 belief the PAGA Aggrieved Employees, for hours they worked during non-course time each
18 pay period. This practice violates California's minimum wage laws, among other provisions of
19 the Labor Code.

20 65. As a result, Defendants failed to pay Plaintiff and the PAGA Aggrieved
21 Employees minimum wages for their work, as required by the Labor Code and the Wage
22 Orders.

23 66. Defendants thus required Plaintiff and the PAGA Aggrieved Employees to work
24 under conditions prohibited by order of the IWC, in violation of those orders.

25 67. Labor Code § 2699(f)(2) generally provides for civil penalties for violations of the
26 Labor Code that do not have a corresponding penalty provision. *Each* of the enumerated Labor
27 Code sections associated with minimum wage violations, as captioned above, carries a civil
28

1 penalty under section 2699(f)(2). The civil penalty is \$100 for the initial violation and \$200 for
2 each subsequent violation.

3 68. Plaintiff, as a personal representative of the state and general public, will and
4 does seek to recover any and all penalties for each and every violation shown to exist or to have
5 occurred under Labor Code §§ 1182.12, 1194 *et seq.*, 1197, and 1198 during the applicable
6 limitations period, in an amount according to proof.

7 **Sixth Cause of Action**

8 **FOR CIVIL PENALTIES FOR FAILURE TO INDEMNIFY FOR ALL**
9 **NECESSARY EXPENDITURES OR LOSSES**

10 **(Cal. Lab. Code §§ 2802, 2699(f)(2); IWC Wage Order No. 4-2001)**

11 **By Plaintiff and PAGA Aggrieved Employees Against All Defendants**

12 69. Plaintiff incorporates the preceding paragraphs.

13 70. Labor Code § 2802(a) provides:

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

18 71. Throughout the relevant liability periods, Defendants required Plaintiff and the
19 PAGA Aggrieved Employees to conduct necessary, work-related tasks for Defendants using
20 their personal devices, including their computers and mobile phones, all without
21 reimbursement. Plaintiff and the PAGA Aggrieved Employees are entitled to a “reasonable
22 percentage” of their mobile phone bill. *Cochran v. Schwan’s Home Service, Inc.* (2014) 228
23 Cal.App.4th 1137, 1144. Plaintiff and the PAGA Aggrieved Employees are also entitled to
24 reasonable reimbursement for their compelled, work-related use of their personal devices on
25 behalf of Defendants.

26 72. Defendants have not indemnified Plaintiff and the PAGA Aggrieved Employees
27 to date for the necessary, work-related expenditures on behalf of Defendants, as described in
28 this Complaint.

73. Labor Code § 2699(f)(2) generally provides for civil penalties for violations of the Labor Code that do not have a corresponding penalty provision. Labor Code § 2802 carries a civil penalty under section 2699(f)(2). The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation.

74. Plaintiff, as a personal representative of the state and general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred under Labor Code § 2802 during the applicable limitations period, in an amount according to proof.

Seventh Cause of Action

FOR CIVIL PENALTIES FOR FAILURE TO PAY FINAL WAGES

AT TERMINATION

(Cal. Lab. Code §§ 201, 202, 208, 2699(f)(2))

By Plaintiff and PAGA Aggrieved Employees Against All Defendants

75. Plaintiff incorporates the preceding paragraphs.

76. On information and belief, Defendants have willfully failed to pay the PAGA Aggrieved Employees who have separated from the COMPANY during the relevant liability periods their accrued wages due to them promptly upon separation, as required by California Labor Code §§ 201 and 202.

77. Even though Plaintiff has not separated from the COMPANY, PAGA allows Plaintiff or any “aggrieved employee”—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer. *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 75.

78. Labor Code § 2699(f)(2) generally provides for civil penalties for violations of the Labor Code that do not have a corresponding penalty provision. *Each* of the enumerated Labor Code sections associated with final pay violations, as captioned above, carries a civil penalty under section 2699(f)(2). The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation.

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79. Plaintiff, as a personal representative of the state and general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred under Labor Code §§ 201, 202, and 208 during the applicable limitations period, in an amount according to proof.

Prayer for Relief

WHEREFORE, Plaintiff CODY GRIFFITH, as a representative for the State of California, and on behalf of himself and all other aggrieved employees he seeks to represent, prays for relief as follows:

1. Maintenance of this claim as a Representative Action under PAGA, and providing Plaintiff and his counsel with all enforcement capability as if this action had been instituted by the Division of Labor Standards Enforcement;
2. For recovery of civil penalties as permitted by Labor Code section 226.8, subdivision (c), in the amount of not more than \$25,000 for each employee whom Defendants willfully misclassified as an independent contractor;
3. For recovery of civil penalties as permitted by Labor Code section 226.3 for failing to provide itemized wage statements altogether, in an amount to be assessed and according to proof;
4. For recovery of civil penalties as permitted by Labor Code section 2699(f)(2), for Labor Code violations without a specific penalty provision, including sections 201, 202, 204, 1182.12, 1191, 1197, 1198, and 2802, in an amount to be assessed and according to proof;
5. For pre-judgment and post-judgment interest on the foregoing at the legal rate;
6. For reasonable attorney fees and costs of suit under PAGA and all other applicable state laws;

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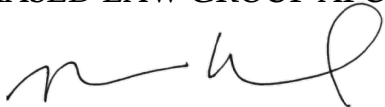
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7. For such further relief as the Court may deem appropriate.

Plaintiffs hereby demands jury trial of this matter.

Dated: April 12, 2021

KASED LAW GROUP APC

By: 

Nathan N. Kased
Janine R. Menhennet
Attorneys for Plaintiff
CODY GRIFFITH, and all other aggrieved
employees of Defendants in the State of
California